

Hindu Law of Inheritance

AS IN
VĪRAMITRODAYA
OF
MITRAMISRA

ABOUT THE BOOK

The institutes of various sages, as embodied in the Dharmaśāstra, which form the primary source of the Hindu law, treat law in the widest sense of the term. In these institutes, no distinction was drawn between positive law on the one hand and laws of morality and religion on the other. But the distinction appeared gradually, some traces of it can be found in the institutes of Yājñavalkya, which devote a separate chapter, called *Vyavahāra*, to the positive law. This authority is held in the highest esteem by the Hindu lawyers. The *Mitākṣarā* of Vijnāneśvara, which gives a systematic exposition of the law and is held to be the highest authority in almost all schools, professes to be but a commentary on Yājñavalkya. The most important part, the *Vyavahāra*, as in Yājñavalkya and *Mitākṣarā*, comprises the sections on the law of inheritance and succession. The gradual development of the Hindu law, which was originally moulded by the institution of family, consisted of the recognition of individual rights and in the introduction of cognates as heirs in preference to more distant agnates.

The *Viramitrodaya*, composed by Mitramisra (17th cent.) is a well known treatise (*nibandha*) and has always been regarded as an authority of considerable importance by the High Courts and legal experts in British India. It presents in a very systematic way the views of Yājñavalkya and *Mitākṣarā* and upholds their opinions, particularly of the latter against critics like Jimutavāhana. It also gives a satisfactory exposition of which may have been left doubtful by the *Mitākṣarā*.

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Translated by
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TO

The Honorable Sir Richard Garth, Kt., Q. C.,

CHIEF JUSTICE OF BENGAL,

THIS TRANSLATION

OF

THE VIRAMITRODAYA

IS,

WITH HIS LORDSHIP'S PERMISSION,

RESPECTFULLY DEDICATED

BY HIS HUMBLE SERVANT,

THE AUTHOR.

P R E F A C E.

THE Institutes of the various sages, which form the primary source of the Hindu law, treat of Law in the widest sense of the term. The rules embracing the religious rites and ceremonies and the moral duties of the different classes of the community, for the enforcement of which mere religious sanctions are prescribed, and the rules of positive law are laid down without any distinction. These rules are believed to be of divine origin ;—a belief, not peculiar to the Hindus, but common to all nations who believe in the creation of man by God. In forming an adequate conception of the creation, one would naturally be impressed with the idea that some knowledge must have been originally revealed to man ; for without it, the condition of those first created, would be utterly helpless.

The comprehensive name of '*Dharma Śāstra*' is applied by the Hindus to the records which embody the knowledge, believed by them to have been communicated by God to man. The *Dharma Śāstras* are divided into two classes,—the *Sruti* and the *Smriti*. The former comprises the four Vedas consisting of *Mantras* and *Brāhmaṇas*, and the *Upanishads*, and is believed to record the very words revealed by the Deity. The *Smriti* comprehends the precepts of divine origin, not embodied in the words of the Deity himself, and includes the Institutes of the sages and certain works on medicine, music, the

grammar of the Sanskrit language and certain other subjects.

The Hindu writers appear to be divided in opinion as to the origin of the *Smritis*. According to one view the knowledge embodied in them had been originally communicated to Manu who taught it to his disciples, and from them it was handed down traditionally from preceptor to disciple until its purport as *remembered* was recorded, but not in the language in which it had been originally delivered. Another theory is, that at the periodical destructions of the world, the *Sruti* alone is preserved, and everything else is lost, and that Manu who is immortal, comes forward on each occasion to teach the laws *remembered* by him. But it will be observed that neither of these theories offers a satisfactory explanation of the existence of the Institutes of law promulgated by the different sages, inasmuch as all these sages are not supposed to have derived their knowledge from Manu himself. Hence a third theory is put forward, that the rules set to the first-created by God were strictly observed by them and their descendants in the *Satya Yuga* or the age of Truth, and that the customs and usages which were observed by them in obedience to the *remembered* commands of God, formed the primary source from which laws were deduced by the sages and consolidated and embodied in the Institutes. This view is consistent with the doctrine that an immemorial custom is presumed to be founded on *Sruti* or revelation, and as such has the force of law, provided it is not expressly disapproved in any of the *S  stras*.

Although, according to modern notions, the method pursued by the sages, in laying down their laws without drawing any distinction between moral and legal obligations, may appear unphilosophical, still it is to be observed that so long as a divine origin of the laws is believed

in, the legal, moral and religious sanctions would all act with equal force upon the minds of men, and so there would be no real difference between them. It is only when the faith in the efficacy of religious ceremonies loses its grasp on the mind of the community, and the non-observance of the rules of morality and religion begins to be excused as a venial offence, not even meriting the punishment of excommunication, that the distinction between legal and religious rules becomes wide and apparent.

The precepts laid down in the *Sástras* are divided by the commentators into several classes. The proper object of the *Sástras* according to them, is to teach of things that lie beyond the scope of reason. What men would do or refrain from doing of their own accord from purely human motives, need not be laid down by the *Sástras*. Where a precept enjoins men to do a certain thing, when no reason could be suggested for doing it, it is called an *utpatti vidhi* or injunction. When a precept forbids men to do what they may do under the natural impulses, it is called a *nishedha* or prohibition. But a precept regarding what men may do, of their own accord, may come within the scope of the *Sástras* if it enjoins that act at a particular time or place. Such a precept is called a *niyama vidhi* or restrictive injunction. There is a third kind of precept called *parisankhyá vidhi*, which is an injunction in form, but a prohibition in purport. As for instance, "Man shall eat the flesh of the five clawed animals." This cannot be an *utpatti vidhi*, for men may do the same of their own accord; nor can it be a *niyama*, as no time or place is specified for compliance with the precept. The meaning therefore is taken to be, that man shall not eat the flesh of any other clawed animal than the five specified ones. When the *Sástras* lay down a precept which is neither an *utpatti vidhi* nor a *nishedha* nor a *niyama* nor a *parisankhyá*, or a precept which embodies what has been declared in another

precept or what may be deduced from another precept, it is called an *anuvāda* or a superfluous precept that need not have been laid down.

Some of the later commentators hold that the *Sāstras* in so far as they deal with positive law, are generally superfluous, inasmuch as the rules of positive law are deducible from reason, or in other words, from a consideration of what best conduces to the welfare of the community and suits the feelings of the people. The reason why positive laws have been laid down in the Institutes is then explained by saying, that they were intended to guard the unthinking from falling into error.

It has already been said that in the Institutes of Hindu law no distinction is drawn between positive law on the one hand and laws of morality and religion on the other. But it is to be observed that one of the principles on which that distinction is based at the present day, is wanting in the Hindu idea of Law. According to the modern view, positive laws are rules of conduct set by political superiors to political inferiors, whereas according to the Hindus, laws of every description emanated from the Supreme Being himself. The idea of a political superior amongst the Hindus did not carry with it the power of making laws for the guidance of the community. The function of the king, according to the Hindu notion, is to protect the country from foreign invasion, and to see that the laws are observed, but he is, equally with his subjects, bound to obey the self-same laws. It would have been humiliating to the pride of the intellectual aristocracy of the Bráhmaṇs to concede to a king the power of making laws for their guidance.

But notwithstanding the want of the above feature in the Hindu notion of Law, it came to be noticed that obedience to laws of all descriptions could not be enforced by the king. A distinction therefore developed itself in

the body of the Hindu laws. In the earlier Institutes, we find no sort of method or arrangement: all kinds of rules are mixed up together. In the Institutes of Yājñavalkya, however, which is admittedly a later work, some trace of a distinction begins to be perceived. It adopts an improved arrangement, devoting a separate chapter to what may well correspond with positive law. This code is divided into three chapters. The first is the *A'chāra* or ritual, which treats of the initiatory ceremonies, the duties of the different castes, the domestic and social usages and the rites of purification and sacrifice. The second chapter is called *Vyavahāra* or litigation, which embraces adjective and substantive law. The third is termed *Prāyaschitta* or expiation, which treats of the religious sanctions, and the mode in which sin incurred by the violation of rules is purged off. The Institutes of Yājñavalkya have, besides, improved the Hindu law on many points, of which one may be noticed here, that the cognates who are not recognized as heirs by Manu and other sages, are for the first time introduced by Yājñavalkya in the category of heirs.

Although Manu is theoretically said to be entitled to the greatest respect, still practically speaking, Yājñavalkya appears to have been held in the highest estimation by the Hindu lawyers. The *Mitāksharā* which gives a systematic exposition of the Hindu law, and is held to be of the greatest authority in almost all the schools, professes to be but a commentary on the Institutes of Yājñavalkya, though it cites texts of other sages to support the doctrines propounded in it. It appears that there were other digests compiled previously, but all of them were replaced by the *Mitāksharā*. This treatise however being, as its name indicates, a very concise one, the law enunciated in it, came to be differently understood by different persons. Thus arose various other commentaries which have concurrently with the *Mitāksharā*

considerable weight in the schools of law by which they have respectively been adopted. Of all the later digests, the *Dáyabhága* alone, which is recognised by the Bengal School as of the highest authority, is, on many important points, opposed in doctrine to the *Mitákshará*. But nevertheless this treatise, excepting in so far as it has been modified by the *Dáyabhága*, may still be regarded as an authority for the Bengal School as well.

Some of the doctrines of the *Mitákshará* which are laid down in clear and unmistakeable language were attacked by the *Dáyabhága* and other treatises, and the reasoning by which they were arrived at, was criticised and impugned. A vindication therefore, of the doctrines of the *Mitákshará* would naturally be undertaken by the admirers of that treatise. This appears to be one of the objects for which the *Víramitrodaya* came into existence. It examines copiously the arguments by which the doctrines of the *Mitákshará* were assailed, exposes their fallacy and, when necessary, puts forward reasons to support the principles laid down in the *Mitákshará*. It exhibits a strong feeling of antagonism to the *Dáyabhága*, and omits no opportunity of exposing its errors of reasoning. The *Víramitrodaya* has, however, on several points dissented from the *Mitákshará*, and although it serves as the ablest vindication of the doctrines laid down in that treatise, it is in itself an independent work giving a complete and accurate digest of the Hindu law.

The various commentaries or digests of the Hindu law which maintain conflicting doctrines, all profess to interpret the laws that are laid down in the Institutes of the sages. They do not however, appear to have been intended to have merely local authority, such as generally speaking, they now possess. The reason for the adoption, in different parts of India, of particular treatises as containing authoritative expositions of the law, appears to be, not that

the arguments by which their peculiar doctrines are maintained were thought very cogent, but that the doctrines themselves were suited to the feelings of those who adopted them. The process of development seems to have been that a change in a particular point of law being considered desirable, by reason of a change of feelings occasioned by altered social conditions, some learned pundit attached, it may be, to the court of a king, undertook to establish the foregone conclusion by the authority of the texts of the sages.

The Hindu law was systematized at a time when society was composed of joint families, the constitution of which, though resting on a natural basis, was to a great extent artificial. A joint family, very naturally consisted of individuals connected by blood, but at the same time it excluded the cognates, however nearly related, and included strangers by marriage and adoption. An individual, as such, was not originally recognised as a member of society, but as belonging to a certain *gotra* or family. And though the family divided and subdivided itself into smaller groups, such as *samānodakas*, *sakulyas* and *sapindas*, still all these were connected by a great many ties, above all, by the tie of a local union. It was only when the smaller groups or individuals left the original seat of the family, and migrated to distant places, that the strong family feeling or clan feeling began to abate, and the natural tie of consanguinity became stronger, and importance began to be attached to the cognates.

The gradual development of the Hindu law which was originally moulded by the institution of families may thus concisely be stated to consist in the recognition of individual rights and in the introduction of cognates as heirs, and of nearer cognates as heirs in preference to more distant agnates.

The principle underlying the Hindu law of inheritance would appear to be the same as in every other system of Inheritance, namely, the common principle of natural love and affection, varied, of course, by the peculiar circumstances of each case. It has, however, been asserted by the highest authorities that the doctrine of spiritual benefit is the key to the Hindu law of inheritance. But with the greatest deference to them, it may be observed in the first place that no trace whatever can be found of such a doctrine in the *Mitákshará*. The author of the *Dáyabhága* does, no doubt, for the first time introduce that doctrine, which is more or less made use of by the later writers according as it suited their purpose ; but the doctrine itself is used in the *Dáyabhága* not for the purpose of determining the right of inheritance, but for the purpose of ascertaining priority, as regards the order of succession, of those who are recognized as heirs in the three fundamental texts of Manu, of Vishṇu and of Yájñavalkya respectively. The principle enunciated in the *Mitákshará* is, that succession is determined by propinquity ; whereas the author of the *Dáyabhága* maintains, that propinquity is not alone the criterion of succession, but in addition to it the capacity for conferring a comparatively greater amount of spiritual benefit is to be taken into consideration ; and the order of succession laid down by him, which is at variance with the *Mitákshará* in many points, especially in the preference given to certain cognates, is justified by him on the principle of spiritual benefit. But it should be observed that a clear and consistent principle of succession cannot be deduced from the various references to the doctrine of spiritual benefit, in the *Dáyabhága*, so as to enable us to decide a question of disputed succession that has not been especially dealt with by the author himself ; in such cases the difficulty of determining which of two persons confers the greater

amount of spiritual benefit, remains unsolved. The Hindu idea of honouring the deceased by offering oblations of food and libations of water appears to be a very catholic one. The Hindus present these offerings to some of their ancestors by name, and to others generally, as well as to the spirits of all that ever inhabited this globe. It is a debt of gratitude paid by a Hindu to all from whom he inherits the world as it is, and especially to those from whom he derives the greatest amount of secular benefit. This will be clear to those who are conversant with the ceremony of *Párvana Sráddha*.

It would appear that the theory of spiritual benefit and the law of succession are both of them based on one and the same principle of natural love and affection. The *sapinda* relationship, as explained by the author of the *Dáyabhága* and other commentators, shows forth in a glaring light the strength of the joint family union, which forms the principle of the *Mitákshará* law of survivorship. Those who may live together in this world as members of a joint family, become united in the next as *sapindas* or as it were members of a celestial joint family. It is by a strained construction of the term *sapinda*, that the author of the *Dáyabhága* attempts to include some of the cognates under it, with a view to support their preferable position as maintained by him. And the critical reader will find that his exposition of the doctrine of spiritual benefit in tracing out the order of succession is far from satisfactory. Some of the inconsistencies of the *Dáyabhága* on this point are noticed in the *Víramitrodaya*, although the author of that treatise himself sometimes invokes the principle of spiritual benefit in establishing some of his positions.

The *Víramitrodaya* was, as the author himself says, composed by Mitra Misra under the direction of Víra Siñha, a king. The name of the work indicates the history of its origin. It may also mean either "the rise of the

friend of Vīra" or "the rise of the heroic sun" of law to dispel the darkness which gathered round many points of law. Following the arrangement of the Institutes of Yājñavalkya, the author divides his work into three books, namely, *A'chāra*, *Vyavahāra*, and *Prāyaschitta*. The book on *Vyavahāra* or litigation again is subdivided into four parts. The first, treats of the constitution of courts and the law of procedure; the second, deals with the law of evidence and ordeals; the third, comprises the eighteen topics of litigation; and the fourth, which is a very short one, deals with cases in which the king is the plaintiff, and to a certain extent corresponds with the present criminal law. The portion translated in the following pages deals with the law of succession and inheritance, and is called *partition of heritage*,—one of the eighteen topics of litigation, occupying more than a fourth of the book of *Vyavahāra*. Like the *Mitāksharā* it shows great respect for the authority of Yājñavalkya, whom he always quotes under the title of *Yogisvara* or 'the lord of sages'.

The *Vīramitrodaya* has always been regarded as an authority of considerable importance. In *Gridhari Lall Roy versus The Bengal Government*, the Lords of the Judicial Committee observe,—“That question, however, is not to be governed by the *Mitāksharā* alone. Adhering to the principles which this Board lately laid down in the case of *The Collector of Madura versus Moottoo Ramalinga Sathupathy*, their Lordships have no doubt that the *Vīramitrodaya*, which by Mr. Colebrooke and others is stated to be a Treatise of high authority at *Benares*, is properly receivable as an exposition of what may have been left doubtful by the *Mitāksharā*, and declaratory of the law of the *Benares* school.”

In the arrangement of the present work, I have followed the suggestions kindly made by the Honorable Justice Rameschandra Mitra. The division into chapters, parts,

sections &c., not found in original Sanskrit works, has been frequently introduced by translators for convenience of reference; though this has sometimes led to the mistake that there are verses in the original corresponding to the number of paragraphs. These works are all written in prose, and there is nothing in them which may be taken to resemble the sections of a statutory enactment. The division into small paragraphs again is very misleading, since one might fancy them to be complete in themselves, whereas in the generality of instances they may often be only isolated links in a long chain of argument. I was therefore advised to divide the work in such a way as to prevent any mistake of that kind.

I have adopted the language of Colebrooke in translating many of the texts of the sages, and compared West and Bühler's translation of the Chapter on *Stridhana* with mine.

For the convenience of those who may wish to make occasional references to the original, that portion of the original Sanskrit, of which the following is a translation, is printed at the beginning of the book.

I am grateful to the Syndicate of the Calcutta University for having offered to contribute one thousand rupees from the Tagore Law Fund towards the expenses of the publication of this work; and to the Honorable Justice Louis S. Jackson, C. I. E., the Honorable Justice William Markby and the Honorable Justice Rameschandra Mitra, who have evinced a kind interest in the preparation of this work.

My best thanks are also due to some of my friends, especially to Babu Sríschandra Chaudhuri, M. A. and Babu Indranáth Bandyopádhyáy, Vakils of the High Court, from whom I have derived considerable assistance.

G. S.

HIGH COURT,
The 5th September, 1879.

वीरमित्रोदये

व्यवहाराध्याय

विभागाख्यव्यवहारपदम् ।

सरकारश्रीगोलापचन्द्रशास्त्रिणा

संस्कृतम् ।

कलिकाताराजधान्याम्

बप्टिष्ट मिशनाख्ये यन्त्रालये मुद्रितम् ।

ई० १८७८ ।

वौरमित्रोदये

व्यवहाराध्याय

विभागाख्यव्यवहारपदम् ।

CHAPTER I.

1. यत्र मन्वादिवचनव्याख्यासु वज्रधा बुधाः ।

विवदन्ते दायभागः स प्रबन्धेन वर्ण्यते ॥

2. तल्लक्षणमाह नारदः । विभागोऽयस्य पितृस्य पुत्रैर्यत्र प्रकाशयते ।

दायभाग इति प्रोक्तं तद्विवादपदं बुधैरिति ॥

पित्रोरयं पितृ इति कृतैकशेषात्पितृशब्दाद्यत् । अग्रे मातृधनस्यापि विभाग-
कथनात् ।

पितृस्य पुत्रैरिति च द्वयमपि सम्बन्धितमात्रोपलक्षणम् । पत्नीत्यादिनान्धेषामपि
भर्त्रादिधने तन्निरूपणात् ।

अतएवोपक्रमे मनुना पित्रादिपदं नोपात्तम् । एव स्त्रीपुंसयोस्तौ धर्मे वा
रतिसंहितः । आपद्यपत्यप्राप्तिश्च दायधर्मं निबोधतेति ॥

दायधर्मोऽप्यत्र विभागरूपोऽभिप्रेतस्तस्यैवाग्रे लक्षणकथनपूर्वकं निरूपणात् ।
उद्देशावसरेऽपि स्त्रीपुंसधर्मो विभागश्चेति तस्यैव विवादपदत्वेनोद्देशात् । अतएव
वाग्रे यावत्सम्बन्धधनविभागमेव प्रदर्शितवान्मनुः ।

3. दायशब्दश्चायं स्वाभिसम्बन्धमात्रद्रव्ये स्वत्वान्तद्रूपो वदति । तथा च
निघण्टुकारः । विभक्त्यं पितृद्रव्यं दायमाज्जर्मनीषिण इत्याह । अपत्रापि पितृपदं
सम्बन्धिसात्रोपलक्षणमन्यत्रापि दायशब्दप्रयोगात् । विभक्त्यं विभागार्हमित्यर्थः ।
अन्यथैकपुत्रादिस्वामिके विभागाभावाद्दायशब्दवाच्यता न स्यात् ।

यत्तु जीमूतवाहनेन दीयत इति व्युत्पत्त्या दायशब्दो ददातिप्रयोगश्च गौणः
मृतप्रजितादिस्वत्वनिवृत्तिपूर्वकपरस्वत्वोत्पत्तिफलसाम्यात् । न तु मृतादीनां तत्र
त्यागोऽस्ति । तच्च पूर्वद्रव्यस्वामिसम्बन्धाधीनं तत्त्वान्धोपरमे यत्र द्रव्येऽन्यस्वत्वं तत्र
निरुद्धो दायशब्द इत्युक्तं ।

तत्र सुन्दरम् । निरुद्धत्वाङ्गीकारे दायददातिशब्दयोर्गौणत्वोपन्यासानर्थक्यात् ।
सर्वथाऽवयवार्थराहित्ये हि निरुद्धत्वं । न च योगरूढत्वम् अवयवार्थबाधस्य स्वमे-

वोपन्यासात् । गौडमवयवार्थं परिकल्प्य तदङ्गीकारस्य निर्णयोजनोपयोग्योन्मात्रयत्व-
मनुभवविरोधो व्याघातश्च । तत्त्वान्मोपरम इति च जन्मनापि स्वत्वसौकर्यादयि-
मात्रत्वादव्यापकम् ।

4. विभागशब्दत्वेनेकस्यान्यानां त्रयसमुदायविषयाणां तत्तदेकदेशे व्यवस्थापने
शक्ताः । अतएवैकपुत्रादीनां पित्रादिधनस्त्वान्ये विभागशब्दाप्रयोगो दायोऽनेन कथं
इत्येव च प्रयोगः । यत्रापि चैकं दासीगवादि बहुसाधारणं तत्रापि तत्तत्कालविशेष-
नियतदास्यदोहनादिना तस्य तस्य स्वत्वव्यञ्जनादस्येकदेशस्त्वान्यवस्थापनरूपो वि-
भागशब्दार्थः । अतएव । एकां स्त्रीं कारयेत् कर्म यथांशेन गृहे गृहे इति । उद्धृत्य
कूपवाप्यम्भस्वनुसारेण गृह्यते इति । युक्त्या विभजनीयं तदन्यथानर्थकम्भवेदिति ।
च दृष्टस्यादिवचनेषु वक्ष्यमाणरीत्या तदुपपादयिष्यते ।

5. स च दायो द्विविधोऽप्रतिबन्धः सप्रतिबन्धश्च । पुत्रादीनां पित्रादिधने
पुत्रत्वादिनैव सत्यपि स्वामिनि पित्रादौ जन्मनैव स्वत्वोत्पत्तेः स तेषामप्रतिबन्धो दायः ।
स्वामिसद्भावस्याप्रतिबन्धकत्वात् । यस्तु विभक्तस्यासंख्यितिनोऽपुत्रस्य गृहस्य पित्र-
भ्रात्रादीनां तद्वन्नरूपो दायः स सप्रतिबन्धः । स्वामिसद्भावस्य प्रतिबन्धकस्यापगमश्च
तत्र स्वत्वोत्पत्तेः ।

6. ननु सर्वोऽपि सप्रतिबन्धश्च दायः । स्वामिसद्भावे पुत्रादीनामपि जन्म-
मात्रेण स्वत्वस्य वक्तुमशक्यत्वात् ।

तथा हि । यदि जन्मनैव पुत्रादीनां पित्रादिधने स्वत्वं स्यात् तर्ह्युत्पन्नमात्रस्य
पुत्रादेकत्वं साधारणमिति तदनुमतिं विना त्रयसाध्येष्वाधानादिषु पित्रादीनामगधि-
कारापत्तौ जातपुत्रः कृष्यकेशोऽग्नीनादधीतेति श्रुतिविरोधः ।

7. किञ्च । विभागात् प्राक् पित्रादिप्रसादनव्यवस्थाविभाव्यत्ववचनं व्यर्थं
स्यात् । तद्वि पित्रा पुत्रान्तरानुमत्या यदि दत्तं सर्वैरेव दत्तमिति विभागप्राप्त्यभावा-
देव प्रतिषेधोऽनर्थकः । अननुमत्या तु साधारणत्रयस्य दानमेव न सम्भवतीति
पित्रादिप्रीतिदत्तत्वादिवाचो युक्तिरयुक्ता ।

8. एवं पुत्राद्यनुमतिमन्तरेण स्यादीनामपि भर्त्रादिभिः प्रीतिदानस्यासम्भ-
वात् तदनुमतौ तु तैरपि दत्तत्वात् । भर्त्रा प्रीतेन यद्वत् स्त्रियै तस्मिन् गृहेऽपि तत् ।
सा यथाकाममन्त्रीयाद्व्यादा स्यावरादृते इति ॥ वचने यथाकाममन्त्रीयाद्व्यादेत्यने-
नाविभाव्यत्वं भर्तृप्रीतिजन्यस्य यदभिहितं तदपि व्यर्थम् । न चेदमविभागावस्थायां
प्रीतिदानं तस्य आविभाव्यत्वं न प्रतिपादयति किन्तु स्यावरादृते यद्वत्मित्यवस्था-
विभागोत्तरमपि भर्त्रा स्त्रियै स्यावरं न प्रीत्या देयमज्ञानाद्वत्तमपि तेन पुत्रादिभि-
रपहृत्य विभजनीयमस्यावरन्तु न प्रत्याहर्त्तव्यमित्यनुवादमात्रम् । स्यावरस्य स्त्रियै
प्रीतिदानप्रतिषेधमात्रं तात्पर्येण बोधयतीति शङ्कनीयम् । तथाग्वयस्य व्यवहितयोजना
प्रसङ्गेनायुक्तत्वात् । स्यावरप्रीतिदानप्रतिषेधमात्रतात्पर्यकत्वेऽन्याशस्यानुवादमात्रं व्यर्थ-
त्वापरपर्यायस्यापद्यते ।

9. अथ । मणिमुक्ताप्रवाणानां सर्वस्यैव पिता प्रभुः । स्यावरस्य तु सर्वस्य न पिता न पितामहः ॥ तथा । पिष्टप्रसादाद्भुज्यन्ते वस्त्राद्याभरणानि च । स्यावरन्तु न भुज्येत प्रसादे सति पैटक इति ॥ वचनमवश्यं विभागप्राक्काशीनस्यावरप्रसाद-दानप्रतिषेधपरं वाच्यं मणिमुक्तादिप्रसाददानानुमतिपुरःसरं तत्रप्रतिषेधाभिधानात् । अन्यथा तस्यानुवादमात्रत्वेन वैयर्थ्यापत्तेः । तथा च जन्मना पुत्रादीनां स्वत्वान्मणि-मुक्तादिषु तदनुमतिमन्तरेणान्ये दाने पितुः स्वातन्त्र्यम् । स्यावरे तु तदनुमत्यैवेति विशेष इति वचनद्वयार्थस्य वाच्यत्वाज्जन्मना स्वत्वमायातोति । मैवम् । तस्य पितामहो-पात्तस्यावरविषयत्वात् । अतोते पितामहे तत्स्वाभ्यन्तारात्पितापुत्रयोः साधारणे तदी-यत्रयस्त्वेषुपि स्यावर एव पुत्रानुमत्यपेक्षा मणिमुक्तादौ तु नेति तदर्थात् ।

10. यत्तु गौतमवचनं उत्पत्त्यैवार्थस्वामित्वं जन्मते इत्याचार्या इति । जन्मनः स्वत्वहेतुत्वे मिताक्षराकृता प्रमादत्वेनोपन्यस्तं तद्वायभागतत्त्वकृता व्याख्यातमेव । पिष्टस्वलोपरमे तज्जन्यत्वस्य हेतुभूतेनोत्पत्तिमात्रसम्बन्धेनान्यसम्बन्धाधिकेन जनकधने पुत्राणां स्वामित्वात्तद्वनं पुत्रो जन्मते नान्यः सम्बन्धीत्याचार्या मन्वन्त इति । न तु पिष्टस्वत्वे विद्यमानेषुपि तत्र पुत्रस्वत्वमिति तदर्थः । नारददेवजवचनविरोधात् । पितर्युद्धं गते पुत्रा विभजेयुर्धनम्यितुरिति नारदः पितुर्धनमित्याह अन्यथा धनं विभजेयुरित्येवावश्यत् । पितर्युपरते पुत्रा विभजेयुर्धनम्यितुः । अस्मान् हि भवेदेवा निर्देवे पितरि स्थिते, इति ॥ देवलोपि पितुर्धनमित्युक्तोत्तराज्ज्ञेनास्मान् हीति स्पष्टमेव तेषामस्वत्वं तत्र हेतुत्वेनोक्तवान् । निर्देवे पातित्यादिस्वत्वापगमकदोष-रहिते । मनुरपि । ऊर्द्धं पितुश्च मातुश्च समेत्वं आतरः समम् । भजेरन् पैटकं रिक्थ-मनीशास्ते हि जीवतेरिति ॥ जीवतोर्मातापित्रोस्तद्वने पुत्राणामस्मान् व्यक्तमेवाह ।

11. यत्तु शङ्खुलिखितावाहृतुः । न जीवति पितरि पुत्रा रिक्थम्भजेरन् । यद्यपि स्वाम्यन्त्रादधिगतनैरर्णवा एव पुत्रा अर्थधर्मयोरस्वातन्त्र्यादिति ॥ स्मृति-चन्द्रिकाकारेण च व्याख्यातम् । यद्यपि तैः पुत्रैः स्वकीयजन्मनः पश्चादनन्तरमेव पिष्टधने स्वाम्यमधिगतं प्राप्तं तथापि जीवति पितरि तद्वनं तदिच्छां विना न विभजे-रन्नर्थधर्मयोरस्वातन्त्र्यप्राप्तिं पिष्टपारतन्त्र्यादिभागकरणेनर्णवाः पुत्रा इति । तेनानेन वचनेन जन्मना पुत्रादीनां पित्रादिस्वामिकधने स्वत्वमिति तदपि न । मन्वादि-वचनानां बह्वनामस्वाम्यप्रतिपादकानामनुरोधेनास्यान्यथावर्जनीयत्वात् । वर्जितञ्च कल्पतरौ । यद्यपि पश्चादधिगतं पिष्टधनव्यापारनिरपेक्षैः पुत्रैर्विद्यादिभिरुपाप्ते धने स्वाभ्यं तथापि तत्राप्यस्वाम्यजीवति पितरि किमुत पिष्टधने अर्थधर्मयोस्तेषां पितरि जीवत्यस्वातन्त्र्यादिति ।

12. किञ्च । स्वत्वं शास्त्रैकसमधिगम्यं तत्र च रिक्थमयादिवज्जन्मनः स्वत्व-हेतुत्वेनानुत्तेज्जन्मना स्वत्वमप्रमादकमेव । अतएव यथा भार्यादिवचनम् । भार्या पुत्रञ्च दासञ्च त्रयस्वाधनाः स्मृताः । यत्ते समधिगच्छन्ति यस्य ते तस्य तद्वनमिति ॥ पारतन्त्र्यमात्रप्रतिपादनपरं तथाऽस्वाम्यवचनान्यपीतपास्तम् । भार्यादिस्वध्याप्रादिव-

चनैः कर्त्तनादिनाचार्यकत्वेन स्नामित्वे सिद्धे युक्तमस्नातन्मन्त्रमात्रपरत्वमन्यथा पुत्रादिषु धनसाधयेषु पुराणादिभ्यस्तं तेषामधिकारित्वमपि विवक्ष्यते । अत्र तु प्रयुत जन्मनः स्वत्वहेतुत्वे प्रमाणाभावाच्चर्यमेवान्यथानेकवचनवर्णनम् ।

13. किञ्च यदि स्वत्वं जौक्तिकं स्यात्तर्हि तदुपायानामपि जौक्तिकत्वात् स्वामी रिक्त्वकयसम्बिभागपरिग्रहाधिगमेषु ब्राह्मणस्याधिकं जन्मं क्षत्रियस्य विजितं निर्विष्टं वैश्यशूद्रयोरिति गौतमवचनं अर्थमेव स्यादनुवादमात्रत्वात् हि पाकादोदगो भवतीत्यादिशास्त्रं निष्प्रयोजनमनुवादमात्रमुच्यते ।

तस्य हि वचनस्यायमर्थः । रिक्त्वं दायः । ऋयः प्रसिद्धः । सम्बिभागो दाय-स्यैवैकदेशनिष्ठस्नामित्वयज्ञको विभागः । परिग्रहः पूर्वमपरेणास्तीकृतस्यारण्या-दिसाधारण्यप्रदेशसम्बन्धिनस्तृणजलकाष्ठादेः स्वीकारः । अधिगमोऽस्नातस्नामिकस्य निध्यादेः प्राप्तिः । एतेषु स्वत्वहेतुषु सत्सु स्वामी भवति । जातेषु च जायते । ब्राह्मणस्य जन्मं प्रतिग्रहादिप्राप्तमधिकमसाधारणं रिक्त्वाद्यस्तु सर्वसाधारण्यः । अधिकमित्युत्तरत्र सर्वत्र सम्बध्यते । क्षत्रियस्य विजितं युद्धविजयदण्डादिप्राप्तमसाधारण्यम् । वैश्यस्य निर्विष्टं क्षत्रिगोरक्षबादिभूतिजन्मम् । शूद्रस्य द्विजशूद्रादिभूति-जन्मम् । निर्पूर्वस्य विशेर्भूतिवाचकत्वम् । निर्वेशो भूतिभोगयोरिति त्रिकाण्डाभिधानात् । वैश्यशूद्रग्रहणस्योपलक्षणात्वादन्येषामप्यनुलोमजप्रतिषोमजातानां स्नूतानामश्वसारण्यमित्याद्यौघनसादिप्रतिपादितं वृत्तिजातं निर्विष्टशब्देन संगृह्यते । सर्वस्य भूतिरूपत्वात् ।

14. किञ्च योऽदत्तादायिनो हस्ताक्षिभ्येत ब्राह्मणो धनम् । याजनाध्यापनेनापि यथा स्नेस्तथैव सः ॥ इत्यदत्तादायिनश्चौरस्य हस्ताद्याजनादिखल्वपि धनमर्ज्यतो दण्डविधानमनुपपन्नं स्वत्वस्य जौक्तिकत्वे । खल्वप्यर्ज्यतो निरपराधत्वात् ।

मन्मते तु शास्त्रैकसमधिगम्यत्वात् स्वत्वस्य चौरदाढकयाजनादावेतद्वचनादेव स्वत्वानुत्पादकत्वात्तद्विधानमुपपन्नतरम् ।

15. अपि च मम स्वममनेनापहतमिति व्यपदेशो न स्यात् स्वत्वस्य जौक्तिकत्वे । अपहर्तुरेव तत्र स्वत्वात् ।

मन्मते त्वपहारस्य निषिद्धत्वेन स्वत्वानुत्पादकत्वादुपपन्नोऽयं व्यपदेशः ।

16. यदि च सुवर्णत्वादिकमिव तत्र स्वत्वमपि प्रत्यक्षप्रमाणकं तर्हि सुवर्णत्वादौ यथा न सन्देहस्तथास्य स्वमिदमस्य वेत्यपि सन्देहो न स्यान्निर्णीतत्वात् । इदमेवोक्तं संयज्ञकारेण । वर्त्तते यस्य यज्ञस्ते तस्य स्वामी स एव न । अन्यस्वमन्यज्ञस्तेषु चौर्याद्यैः किं न दृश्यते । तस्माच्छास्त्रतएव स्यात् स्वत्वं नानुभवादपि । अस्यापहतमेतेन न युक्तं वक्तुमन्यथा । विदितोऽर्थगमः शास्त्रे तथाऽवर्षिं पृथक् पृथगिति ॥ शास्त्रे स्वामी रिक्त्वकयेत्यादौ साधारणासाधारण्योऽर्थगमः स्वतोपायः पृथक् पृथगवर्षितस्तथा विदितो जौक्तिकत्वे तस्माच्छान्दर्थक्यं स्यादित्यर्थः । अन्यत् स्पष्टम् । यथावर्षमिति स्मृतिचक्रिकायां पाठः । पूर्वपाठस्तु मदनरत्नलिखितः ।

17. अथ यद्यस्य यथेष्टं विनियोग्यं तत्तस्य स्वमिति लोकाप्रसिद्धेर्यथेष्ट-
विनियोग्यत्वं स्वत्वमिति चौर्याद्यर्जिते नातिप्रसङ्गस्तत्र चौरादेर्यथेष्टविनियोग्यत्वा-
भावादिनियोगकाले चासादिदर्शनात् । अतएव सन्देहोऽप्युपपन्नः सुवर्णात्वादितुल्य-
त्वाभावात् स्वत्वस्य । मैवम् ।

असम्भवात् । शास्त्रेण सर्वस्य कुटुम्बभरणादौ विनियोगविशेषनियमादैर्लोक-
विनियोगविषयत्वस्य कुत्राप्यप्रसिद्धेः । तदप्याह संप्रवृत्तकारः शङ्कोपन्यासपुरःसरम् ।
न च समुच्यते तद्यत् खेच्छया विनियुज्यते । विनियोगोऽस्य सर्वस्य शास्त्रेणैव नियम्यते
इति ॥ अत्र पूर्वार्द्धे शङ्कोपन्यास उत्तरार्द्धे तत्परिहारः ।

18. न च रिक्थादिवदुत्पत्त्यैवार्थस्वामित्वमिति गौतमवचन उत्पत्तेरपि
जन्मापरपर्यायायाः स्वत्वहेतुत्वोक्तेः सत्यपि स्वत्वस्य तदुपायानाह शास्त्रैकसमधिगम्यत्वे
जन्मना पुत्रादेः पित्रादिधने सत्वमक्षतमेवेति वाच्यम् ।

तस्यानेकदूषणैरन्यथाव्याख्यानस्य प्रागेवोक्तत्वात् । इदमेवाभिसन्वाय धारे-
श्वरेणापि शास्त्रैकसमधिगम्यमेव स्वत्वमिति सिद्धान्तितम् ।

19. अपि च । जीवत्यपि पित्रादौ पुत्रादेस्तद्वने जन्मना स्वत्वे तदनिष्ठा-
यामपि पुत्रादीच्छयैव विभागः स्यात् । अस्मात्तन्मन्वचनमैवमिति चेत् न । तथा
सति दृष्टादृष्टविरोधमात्रं भवेद्यवहारस्तु सिद्धोदेव । यथा पित्रादिभिः सह पुत्रा-
दिभिश्चतुष्पाद्यवहारे प्रवर्त्यमाने तेषां दृष्टादृष्टयोः श्रेयोविघातमात्रं गुरोः शिष्ये
पितुः पुत्र इत्यादिवचनार्थ इति प्राक्प्रपञ्चितं तथात्रापि स्यात् । अस्त्विति चेन्न
सकलनिबन्धविरोधात् ।

20. क्षत्रिज्जन्मनैवेति प्राचीनग्रन्थलिखनमपि जन्मनिबन्धनत्वात्पितापुत्रादि-
सम्बन्धस्य पितृमरणस्य च तत्त्वत्वापगमहेतुत्वेन परम्परया वर्जनीयम् ।

21. किञ्च । ऊर्द्धं पितुश्चेत्यादि मनुवचनं जन्मना पुत्राणां स्वत्वपक्षे जीवति
पितरि सत्यपि पुत्राणां स्वाम्ये तदिच्छया विना तद्विभाग ऊर्द्धन्तु खेच्छयेति विभाग-
निषेधार्थं प्रागिति वाच्यं तच्चान्याथ्यं अस्वार्थपरत्वापत्तेः । न च पितुस्परमक्काणविधा-
नार्थं विभागविधानार्थं चेति युक्तम् । दृष्टार्थत्वादिभागस्योभयस्याप्यनुपपत्तेः । नापि
नियमविविधिविभागस्य एवं सह वसेयुर्वा पृथग् वा धर्मकाम्यया इति मनुना विकल्पा-
भिधानात् । कालविधौ च पित्रुपरमानन्तरकाण एव विभागो नैमित्तिकस्य निमि-
त्तानन्तर्यवाधोऽयं स्यात् । जातेष्टिवज्जातप्राग्बियोगापत्तिस्वरूपविशेषविरोधस्यात्रा-
भावात् ।

22. अतो जीवतोः पित्रोस्तद्वने स्वाम्यं नास्ति किन्तूपरतयोक्तयोरिति तत्का-
लीनस्वत्वज्ञापनार्थं मन्वादिवचनं विभागस्तु स्वातन्त्र्यात्तत्कालीन इच्छाप्राप्तेऽनुद्यते ।
तथा चैतद्वचनविरोधादपि न जन्मना स्वत्वं बह्वं शक्यम् । उपरमवत्पतितत्वादिक-
मपि पित्रादिस्वत्वनाशकारकं वक्ष्यते ।

तस्मात् पित्रादिस्वत्वनाशएव तद्वने पुत्रादीनां स्वाम्यं न तत्त्वत्वसमकालीनमिति

स्वाम्यादिसद्भावस्य सर्वत्र प्रतिबन्धकत्वात् सर्वोऽपि सप्रतिबन्धएव दाय इति द्वैविध्य-
मनुपपन्नमिति ।

23. अत्रोच्यते । यदि पित्रादिस्वत्वाप्रगम एव पुत्रादीनां तदने स्वत्वं तर्हि निर्दोषे पित्रादौ जीवति तेषां धनसाध्यवैदिककर्मस्नानाधिकारप्रसङ्गे जातपुत्रः कृष्ण-
केशोऽपीनादधीतेत्यादिश्रुतिविरोधस्तुल्यः । न तु स्वकपोलकल्पितहेत्वाभाससमर्थित-
स्मृत्यर्थानुरोधेन श्रुतिसङ्कोचो युक्तः । आहिताग्नाविष्टप्रथमयज्ञे पित्रादौ जीवत्यपि
पुत्रादीन् प्रति तत्प्रत्ययविशेषात् । सकलयाज्ञिकशिक्षणानां तदनुष्ठानदर्शनाच्च । जात-
पुत्रकृष्णकेशप्रदाम्नां वयोवृद्धानतिक्रमस्यैव विवक्षा न तु तयोरप्यस्थितयोः स्वरूपे-
ष्वेति विरोधाधिकारश्चे भाष्यवार्त्तिकेऽपि स्थितत्वात् । न च यथा पुत्रानुमत्या पितु-
र्भवन्मते तदधिकारस्तथा मन्मतेऽपि पुत्रादीनामपि पित्राद्यनुमत्येति वाच्यम् । यतो
दयोरपि मते पितुः स्वत्वस्य धने विद्यमानत्वात् स्वत्वत्वाग्रूपप्रधाननिष्पत्तिरविहता
भवन्मते तु पुत्रादीनां स्वत्वस्यैवाभावादनुमतेच्च स्वत्वाजनकत्वाद्यागादिप्रधाननिष्पत्ति-
रेव कथम् । वस्तुतस्तु पितुः पुत्रानुमतिरपि नापेक्षिता स्वातन्त्र्यात् । पित्राद्यनुमतिस्तु
पुत्रादेरपेक्षिता पारतन्त्र्यादित्येतावान्विशेषो यथा स्त्रियाः स्वधनेनापीष्टापूर्त्तादि-
व्रतादौ भर्त्रादेरनुमतिस्तत्पारतन्त्र्यवचनात् । अननुमतौ तु स्वतन्त्रः प्रत्यवायो वैमुख्यं
वा कर्मणि न तु प्रधानस्वरूपा निष्पत्तिः । पित्राद्यनुमतेः स्वत्वात्पादकत्वञ्चेतदनुरोधात्
कल्प्यमानमलौकिकमग्राह्यम् । तस्माच्छास्त्रैकसमधिगम्येऽपि स्वत्वे कथञ्चिज्जन्म-
नोऽपि रिक्त्यादिवचनादधिगमादिपदेन संयुज्य आवश्यकः श्रुतिस्मृतिपुराणशिक्षाचार-
सिद्धस्य निर्दोषे जीवत्यपि पित्रादौ पुत्रादियन्त्राद्यनुष्ठानाधिकारस्यानुरोधात् ।
वस्तुतस्तु लौकिकमेव स्वत्वं लोके च जातमात्राणामेव पुत्रादीनां पित्रादिधने स्वाभ्य-
वहारोऽन्येषामपीति साधयिष्यामः ।

24. यच्च पित्रादीनामनुमत्ययोग्यपुत्रादिसाधारणस्वत्वे कथमनुमतिमन्तरे-
खाधानादिकं स्यादित्युक्तं तदनुमतियोग्येऽपि पुत्रादिषु स्वातन्त्र्यात् पित्रादीनां न
तदनुमत्यपेक्षा किमुतानुमत्ययोग्येऽपि परिहृतप्रायमेव । तद्विधिवन्नादेवाधिकारो-
ऽवगम्यत इति तु विज्ञानेश्वराचार्यः ।

25. अतस्त्रोत्पत्त्यैवार्थस्वामित्वमिति गौतमवचनस्य यज्जीमूतवाहनरघुनन्द-
नाभ्यां पारम्परिकोत्पत्तिस्वत्वहेतुत्वेन व्याख्यानं कृतं तदपि अर्थमेव ।

26. यत्तु शङ्खवचनं तस्यापि स्मृतिचन्द्रिकोक्तव्याख्यैव साधीयसी । कल्पतरुक्त-
व्याख्यायान्तु विद्याद्युपात्ताध्याहारेऽनुपस्थितभूयःपदोऽध्याहारः प्रसज्येत । जन्मपदा-
ध्याहारस्तु पुत्रत्वाद्याक्षेपोपस्थितेरप्याध्याहाराच्च नायुक्तः ।

27. तेन श्रुत्युपलब्धस्वत्वानुरोधाच्चानुगारददेवजादिवचनानामेवास्वातन्त्र्यप्रत्य-
वर्धनमुचिततरम् ।

28. यदप्युक्तं प्रीतिदत्तस्याविभाज्यत्ववचनानि जन्मना स्वात्माभ्युपगमेऽनुपपन्ना-
नीति । तदपि न । अनुमत्यभिप्रायेण स्वावरप्रीतिदानाभावशिखरीकरवार्थतयोपपत्तेः ।

स्वातन्त्र्याद्वा पितुरनुमतिमन्तरेणापि तेन दत्ते स्थावरव्यतिरिक्ते पुत्राणामविभाज्यत्वमुच्यते ।

29. अतएव स्थावरे विशेषवचनम् । स्थावरं द्विपदस्यैव यद्यपि स्वयमर्जितम् । असम्भूय सुतान् सर्वान् न दानं न च विक्रय इति ॥ मणिमुक्ताप्रवालानामित्यादिवचनन्तु जन्मना स्वल्पक्षयवोपपन्नतरम् । न च पितामहेपात्तस्थावरमात्रविषयत्वमिति युक्तम् । न पिता न पितामह इति द्वयग्रहणात् । पितामहस्य हि स्वार्जितमपि पुत्रे पौत्रे च सत्यपि न देयमिति वचनं जन्मना स्वल्पमयति । यथा परमते मणिमुक्ताप्रवालादीनां पैतामहानामपि पितुरेव स्वत्वं तत् स्मरणात् तथास्मिन् मतेऽपि पुत्रादीनां तत्र जन्मना स्वत्वे साधारणेऽपि पितुर्दानाधिकार इत्यविशेषः ।

30. तस्मात् पैतृके पैतामहे च द्वये पुत्रादीनां यद्यपि जन्मनैव स्वत्वं । तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु च प्रसाददानकुटुम्भभरणापदिमोक्षादिषु च स्थावरव्यतिरिक्तद्रव्यविनियोगे स्वातन्त्र्यमिति ध्येयम् । स्थावरादौ तु स्वार्जिते पित्रादिपरम्पराप्राप्ते च पुत्रादिपारतन्त्र्यं तुल्यमेव । स्थावरं द्विपदस्यैव यद्यपि स्वयमर्जितम् । असम्भूय सुतान् सर्वान् न दानं न च विक्रयः ॥ ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः । वृत्तिश्च तेऽभिकाङ्क्षन्ति न दानं न च विक्रयः ॥ इत्यादिवचनात् । अस्याप्यपवादो वक्ष्यते ।

31. यच्च स्वत्वस्य शास्त्रैकसमधिगम्यत्वाच्चास्त्रे च जन्मनः क्वापि स्वत्वहेतुतानाभिधानात् । कथं जन्मना पुत्रादीनां पित्रादिधने स्वत्वस्वीकार इत्युक्तम् । तत्तु शास्त्रैकसमधिगम्यत्वमभ्युपेत्यापि गौतमादिवचन उत्पत्तेरपि स्वत्वोपायत्वोक्तेः परिहृतमेव प्राक् ।

32. वस्तुतस्तु न स्वत्वस्य शास्त्रैकसमधिगम्यत्वं युक्तियुक्तम् । सर्वथा शास्त्रज्ञानान्तरहितानां प्रथन्तवासिनां स्त्रेष्वादीनामपि समस्तमिदमन्यस्य स्वमिति व्यवपदेशस्तत्कृतश्च क्रयविक्रयादिव्यवहारो दृश्यते । तेनान्यव्यतिरेकाभ्यां क्रयाद्युपायकं स्वामित्वनिरूपितस्वत्वमपि तैर्यथेष्टविनियोगार्हत्वरूपं पदार्थान्तररूपं वा प्रत्यक्षादिप्रमाणादेवावगतमित्यवश्यं वाच्यम् ।

33. एतत्कर्त्तव्यमप्युक्तोऽनुमानवाक्यप्रयोगोऽपि विज्ञानयोगिनोक्तः । स्वत्वं लौकिकं लौकिकार्थक्रियासाधनत्वाद् ब्रीह्यादिवदित्यन्वयदृष्टान्तः । आहवनीयादीनां हि शास्त्रैकसमधिगम्यानां न लौकिकार्थक्रियासाधनत्वमस्तीति व्यतिरेकदृष्टान्तः । तेनान्यव्यतिरेको हेतुः । यद्यप्याहवनीयादीनामपि यागादिलौकिकक्रियासाधनत्वमप्यस्ति । तथापि तल्लोकप्रमाणकायगदिरूपेण नालौकिकाहवनीयादिरूपेणेति न व्यभिचारः । इह तु सुवर्णादिरूपेण न क्रयादिसाधनत्वमपि तु स्वत्वेनैवेति । सुवर्णत्वादिनाऽऽभरणार्थक्रियासाधनत्वात् तद्यथा लौकिकं रूपमेवं स्वत्वमपि सर्वानुगतं लौकिकमेव न ह्यस्त्रेण क्रयादिक्रियानिर्वाहो जायेत ।

34. न चैवं स्वामी रिक्तेत्यादिसूतीनां लोकसिद्धार्थानुवादकत्वेनानर्थक्या-

पत्तिरिति बाध्यम् । धर्माधर्मोपयोगितया व्याकरणास्मृतावगादिवाचकत्वतदभावस्य-
साधुत्वासाधुत्वविवेकस्येव तस्योपपत्तेः । साधुशब्दाधिकरणे ह्येतदवस्थितं यत्सङ्कीर्ण-
व्यवहारिणां लोकानामविविक्तं कौकिकमेव साधुत्वं शास्त्रेण विविच्यते न त्वलौकिकं
साधुत्वं । साधुभिर्भाषेत इत्यादिविधावन्योन्याश्रयप्रसङ्गादित्यादि । एवमत्रापि ।

35. तथा च नयविवेके भवनायः । लोकसिद्धिश्चाङ्गनं जन्मादि अतएवा-
निन्द्यं प्रथमलोकधीविषयव्यवस्थितं तन्निबन्धनार्था स्मृतिर्याकरणादिस्मृतिवदिति ।
जन्मादीत्यादिपदेन क्रयादिग्रहणम् । व्याकरणादीत्यादिपदेन सङ्गीतरत्नपरीक्षासामु-
द्रिकाणां ग्रहणम् । रागादीनामपि हि लोकसिद्धानामेवानभिमुक्तान् प्रति विवेकार्थ-
मेव तल्लक्षणकथनमित्युक्तं स्मृत्यधिकरणे आचार्य्यचरणैः ।

36. स्वामी रिकथेत्यादिवचनन्तु प्रागेव व्याख्यातम् । रिकथशब्दस्तु निष्पृति-
बन्धदायपरः संविभागशब्दश्च सप्रतिबन्धदायपर इति मिताक्षरायां विज्ञानेश्वरेण
व्याख्यातम् । स्मृतिचन्द्रिकाकृता तु रिकथं पित्रादिधने पुत्रादीनां स्वामित्वापादकं
जन्मैवेति व्याख्याय संविभागः पित्रादिधने विशेषेणिलुक्स्वामित्वसम्पादको विभाग
इति संविभागशब्दो व्याख्यातः । तन्न स्वस्य सतो विभागात् स्वत्वहेतुत्वेन तत्प्रतिपाद-
नानौचित्यात् । एकदेशव्यवस्थापनमात्रं हि स्वत्वस्य विभागेन क्रियते । मुख्यामुख्य-
हेतुत्वग्रहणे स्वामिपदे वैरूप्यापत्तेः । अतएवाह मिताक्षरायां विज्ञानेश्वराचार्य्यः ।
विभागशब्दश्चानेकस्वामिकधनविषयः प्रसिद्धो नान्यदीयविषयो न प्रहीणविषय इति ।
लोके पुत्रादीनां जन्मनैव स्वत्वं प्रसिद्धतरमिति च ।

37. यदपि पत्नी दुहितरस्त्रेत्यादिवचनं तदपि स्वामिसम्बन्धनिबन्धनानेकदाय-
हरप्राप्तौ लोकप्रसिद्धेऽपि स्वत्वे व्यामोहनिरासार्थम् । प्रायेण व्यवहारस्मृतीनां लोक-
सिद्धार्थानुवादकत्वमिति सकलनिबन्धुभिरभिधानात् ।

38. नियतौपायिकं स्वत्वं लोकसिद्धमेवेति भगवतो गुरोरपि सम्मतम् ।
लिप्सानये हि तृतीये वर्णके इत्यार्जननियमानां कृत्यर्थत्वे स्वत्वमेव न स्यात् स्वत्व-
स्यालौकिकत्वादिति पूर्वपक्षासम्भवमाशङ्क्य इत्यार्जनप्रतियक्षादीनां स्वत्वसाधनत्वं लोक-
सिद्धमेवेति पूर्वपक्षः समर्थतस्तेन । न च इत्यार्जनस्य कृत्यर्थत्वे स्वमेव न भवतीति
याग एव न संवर्त्तते । प्रकथितमिदं केनापि । अर्जनं स्वत्वं नापादयतीति विप्रति-
षिद्धम् इति ग्रन्थेन ।

अस्यार्थस्वीकाराकृता विवृत एवम् । यदा इत्यार्जननियमानां कृत्यर्थत्वं तदानिय-
मानां स्वतोपायतामिदं शास्त्रं न बोधयति । कृत्यर्थताबोधने व्यावृत्तत्वात् । तथा
सति प्रतियक्षादिप्राप्तस्य स्वत्वमित्यत्र प्रमाणाभावादस्तेन च स्वत्यागात्मकयागासम्भवात्
कस्येदम् इत्यार्जननियमा भवेयुरिति पूर्वपक्षासम्भव इति शङ्कार्थः । प्रकथित-
मित्याद्युत्तरस्तस्यार्थः । अर्जनप्रतियक्षादेः स्वत्वहेतुताया लोकसिद्धत्वेन शास्त्रस्य
तत्राद्यापाराग्रियमानां कृत्यर्थतैव तेन गम्यत इति न यागासम्भवे नियमानर्थ-
क्यचेति ।

सिद्धान्तेऽपि तेन स्वत्वस्य लौकिकत्वाभ्युपगमेनैव विचारप्रयोजनमुक्तम् । अतो नियमातिक्रमः पुरुषस्य न क्रतोरिति । अस्याप्यर्थं एवं विवृतः । यदा द्रव्यार्जन-नियमानां क्रत्वर्थत्वं तदा नियमार्जितेनैव क्रतुर्न नियमातिक्रमार्जितेन द्रव्येण । न तु पुरुषस्य नियमातिक्रमदोषः पूर्वपक्षे । सिद्धान्ते त्वर्जननियमस्य क्रत्वर्थत्वाभावात् केवल-पुरुषार्थत्वादतिक्रमार्जितेनापि द्रव्येण क्रतुसिद्धिरप्रत्यक्षा । पुरुषस्यैव तु नियमातिक्रम-दोष इति । अनेन नियमातिक्रमार्जितस्यापि स्वत्वमभ्युपगतमन्यथा क्रतुसिद्धाभिधान-विरोधात् ।

39. तत्रैवाधिकरणे कुमारिणस्वामिनोऽप्यत्रभवतः स्वत्वं लौकिकमित्येवाभि-मतमिति । तत्रत्यवार्त्तिकं तन्त्ररत्नाभियोगभाजां सुखभमेव ।

40. अतएवाह शास्त्रदीपिकायां पार्थसारथिः रागप्राप्तेस्त्वावदर्जनं न शा-स्त्रीयम् । रागतश्च पुरुषार्थतया प्राप्तिः प्रत्यक्षेणैवार्जितं द्रव्यं पुरुषं प्रीणयत् पुरुषार्थं विज्ञायते न तदनुमानेन क्रत्वेकशेषतया शक्यं विज्ञातुम् । तस्मात् पुरुषार्थं द्रव्यं क्रतुरपि पुरुषकार्यार्थान्तरमन्यतम इति कार्यान्तरवत् क्रतावप्युपयुज्यत इत्येतावान् विशेषः । न तु तस्यैवाङ्गं तथा सति जीवनलोपात् क्रतुरेव न संवर्त्ततेति प्रघट्टकेन । अत्रा-र्जनस्य शास्त्रीयत्वं निरस्यता स्वत्वस्य तदुपायानाञ्च लोकासिद्धत्वं स्पष्टतरमेवोक्तम् । अन्यदपि तेनैवोक्तम् । तस्मात् पुरुषार्थं द्रव्यार्जनमेवञ्च दृष्टार्थं भवति । नियमस्तु दृष्टाभावात् काममदृष्टार्थः स्यात् । अदृष्टमपि पुरुषार्थार्जनविषयत्वात् नियमस्य पुरुषगतमेव कल्प्यते । तेनासावुपायान्तरेणार्जयन् प्रत्यवेतीति गम्यत इति ।

41. ततश्च स्वामी रिकथेत्यादिवचसां लौकिकमेव रिकथादीनां स्वलोपायत्व-मनूय तदतिरिक्तोपायनिवृत्तौ तात्पर्यं नियमविधयेति नानर्थक्यग्रहणमपि । हतिसा-धनभोजनाश्रितदिङ्नियमवत् । द्रव्यार्जनमेव क्रत्वर्थपुरुषार्थत्वविचारोदाहरणं निय-मस्तु पूर्वपक्षयुक्तितयोपन्यस्तः । स एव तत्रोदाहरणमित्येव भट्टशुभ्रमतयो भेदः । स्वत्वस्य लौकिकत्वं तूभयसम्मतमिति निष्कर्षः । तत्तदूषणभूषणादि तु तन्माभियो-गवतामाकरे एव व्यक्तं प्रस्तुतानुपयोगादिह नोच्यते ।

42. एतेन चौर्यादिप्राप्तस्यापि स्वत्वं स्यादिति यत् संयहकारधारेन्वराभ्यां स्वत्वस्य लौकिकत्वे दूषणमभिहितं तदपि परास्तम् । चौर्यादिषु स्वलोपायत्वस्य लोकावस्थाप्रसिद्धेरन्यस्य स्वमिदं नास्त्येवं व्यवहारात् । क्रयाद्युपायसन्देहादेव स्वत्व-सन्देहोऽपीदमस्य वास्य वेत्याकारको नानुपपन्नः । मम स्वमनेनापहृतमिति न ब्रूया-दपहर्तुरेव स्वादादिति च यत् स्वत्वस्य लौकिकत्वे दूषणमभिहितं तदप्येतेनाकू-नविश्रीयम् ।

43. यद्योक्तं संयहकृता । शास्त्रेण सर्वस्य तत्र विनियोगनियमव्याप्येष्ट-विनियोग्यत्वरूपस्वत्वासम्भवः । इच्छा क्वापि नियोगासम्भवादिति । तदप्यापाततः । नहि वयमैच्छिकविनियोगोपहितत्वं ब्रूमोऽपि तु तदर्हत्वमात्रम् । अन्यथा राजादि-भयादिच्छाप्रतीवातेऽपि तन्न स्याद्विनियोगेच्छानिच्छादशयोश्च स्वत्वतदभावौ विरज्यौ

प्रसज्येयाताम् । राजादिनियन्त्रणादिव शास्त्रनियन्त्रणादन्यत्रैच्छिकविनियोगाभावेऽपि तदर्हत्वस्यानपायात् । अतएव दुर्हतेनाशास्त्रीयविनियोगेऽप्यख्यवहारो नास्ति । प्रत्यवायमात्रपरं शास्त्रातिक्रमात् । तदर्हता च तदर्जितत्वप्रयुक्ताख्येव । तथा च नयविवेकेऽप्युक्तम् । तच्च तस्य तदर्हं यद्येनार्जितमिति । तदर्हं यथेष्टविनियोगार्हमित्यर्थः । प्रतिबन्धादङ्गुरमजनयतोऽपि कुसूलस्य वीजस्य वीजत्वप्रयुक्तमङ्गुरोत्पादना-
र्हत्वमिव । वस्तुतस्तु वीजत्वाङ्गुरार्हत्वयोरिव स्वत्वत्वयथेष्टविनियोगार्हत्वयोरपि भेद एव । अन्यथार्हतावच्छेदिकापरिचयेऽर्हताया दुर्निरूपत्वात् । तेन ब्राह्मण्यमिव स्वत्वमपि तदुपायज्ञानव्यञ्जं प्रदार्थान्तरमेवोत्पत्तिविनाशशालि । ब्राह्मण्यन्तु जातिरूपं नित्यमित्येतावान् परम्भेदः । इदञ्चाकारे व्यक्तं लीलावत्यादौ च ।

44. अत्र भिताक्षरायां स्वत्वलौकिकालौकिकत्वविचारप्रयोजनमुक्तं । शास्त्रैकसमधिगम्ये स्वत्वे । मनुः । यद्वर्हितेनार्जयन्ति कर्मणा ब्राह्मणा धनम् । तस्योत्सर्गेण शुद्धान्ति जपेन तपसेव च ॥ इत्यादिस्मरणादसत्यतियद्वादि यस्य यद्वर्जनेपा-
यत्वेन निषिद्धं तदर्जिते तस्य स्वत्वाभावाच्चौर्याद्यर्जितवस्तुत्राणामपि तदविभाव्यमेव । लौकिकत्वे तु स्वत्वस्य तदर्जितेऽपि पितुः स्वत्वात् तत्पुत्राणां पितृधनत्वेन तद्विभाव्यम् । अर्जयितुरेव प्रतिषेधातिक्रमनिमित्तप्रत्यवायात् प्रायश्चित्तम् । तत्पुत्रादीनान्तु दाय-
रूपधर्मेपायतस्तत्त्वमिति न प्रायश्चित्तमपि । सप्तवित्तागमा धर्म्या दायो लाभः क्रयो जयः । प्रयोगः कर्मयोगश्च सत्यतियद् एव वा ॥ इति मनुस्मरणात् । प्रयोगो वृद्ध्यर्थं
व्रथप्रयोगः । कर्मयोग आर्त्विज्यादिकरणम् । तत्र दायादीनां त्रयाणां वर्गचतुष्टय-
साधारणेन जयस्य क्षत्रियं प्रति प्रयोगस्य स्वयंभूतस्य वैश्यं शूद्रश्च प्रति धर्मत्वम् । अस्वयंभूतस्यापि च स्वयंभूतस्यापि सर्वान् प्रति । कर्मयोगस्य तु विप्रं प्रत्येवेति विशेष इति ।

45. अत्र मदनरत्नकरो दूषणमाह । स्वत्वस्य शास्त्रैकसमधिगम्यत्वेऽप्य-
सत्यतियद्वादिनिषेधो न स्वत्वानुत्पादकतां तेषां वदन्ति । किन्तु प्रत्यवायमात्रहेतु-
ताम् । इतरथा । आपद्रुतः सम्प्राप्यन् भुङ्क्षानो वा यतस्ततः । न जिष्येतेनसा विप्रो
ज्वलनाकसमो हि सः ॥ कुसीदं कृषिवाणिज्यं प्रकुर्वीतास्वयङ्मतम् । आपत्काले स्वयं
कुर्व्यान्नेनसा युज्यते द्विजः ॥ इति वचनैरेनसा न युज्यत इत्यभिधानेनापि प्रत्यवाया-
भावावगमेनापि प्रत्यवायस्यैवावगमात् । प्रतिषेधप्रतिप्रसवयोः समानविषयत्वौचि-
त्वात् । अतएवानापि तद्व्यत्ययपरित्यागपूर्वकं जपतपोरूपं प्रायश्चित्तमेव विदधाति ।
न चौर्यादिवज्राजदण्डमपि किञ्चिद्वचनमसत्यतियद्वादौ । तेनासत्यतियद्वादेः पूर्वपक्ष-
सिद्धान्तयोर्द्वयोरपि तेषां स्वत्वानुत्पादकत्वाविशेषात्तदर्जितस्य पुत्रादिविभाव्यत्वमपि
तुल्यमिति नैतत्प्रयोजनं विचारस्यास्य युक्तमिति ।

46. अत्र वदामः । शास्त्रैकसमधिगम्यस्वत्वादिनो मते यथा चौर्यादि-
निषेधस्य स्वत्वानुत्पादकत्वदण्डप्रयोजकत्वप्रायश्चित्तार्हताप्रयोजकत्वपरता तथाऽसत्य-
तियद्वादिनिषेधस्याप्युक्तम् । यथा आपदुपाधिना । तथैव सप्तमे भक्ते भक्तानि वडनश्रता ।

अन्यस्तनविधानेन हर्तव्यं हीनकर्मणः ॥ आख्यातव्यञ्च तत्तस्मै पृच्छते यदि पृच्छती-
त्यादिप्रतिप्रसवबलाच्चौर्ये तत्तितयाभावस्तथाऽसत्यप्रतिग्रहादेरप्यन्तु । अन्यथोभयत्रापि
ततः पञ्चमहायज्ञाद्यनिष्पत्तिप्रसङ्गः । शास्त्रीयत्वे स्वत्वस्याप्रसक्तचौर्योपायकत्वनिषेधः
कथमिति चेत् । अधिगमान्तर्भावेन कथञ्चिद्वात्यसक्तस्तेनावश्यवक्तव्यत्वात् । अपरथा
प्रतिषेधानुपपत्तेः । शास्त्रप्राप्तप्रतिषेधे च विकल्पापत्तिभिर्या दीक्षितो न जुहोती-
त्यादिवद्वाध्यकारमतेन पर्युदासत्वं सामान्यविशेषभावेन विशेषनिषेधसामान्यविध्यो-
र्वाध्यवादकभावोऽपि वा मतान्तरेणेत्यपि स्वीकार्यमेवागत्या । प्रतिग्रहादेन्नु प्रसक्ति-
र्ब्राह्मणादेरस्येत्यापत्तदभावोपाधिकौ प्रतिप्रसवप्रतिषेधावप्युपपन्नतरौ । तर्ह्यसत्यति-
ग्रहसंयुक्तवागिज्यादावनापदि ब्राह्मणस्य राजदण्डोऽपि स्यादिति चेन्न इष्टापत्तेः ।
न हि स्वधर्मत्यागिनो राजदण्डाभावः कस्यापि सम्मतः । स च क्वचित् सामान्य-
रूपेणोक्तएव गृह्यते क्वचिद्विशेषाभावात् इत्यन्यदेव तत् । अतएवालौकिकस्वत्व-
वादिन इदमप्यपरदूषणम् । चौर्यादिनिषेधस्य त्रितयप्रयोजकतागौरवम् । पर्युदास-
त्वादिसिद्धिर्वागौरवञ्च लौकिकस्वत्वादिनन्तु दण्डप्रत्यवायमात्रपरत्वम् । तेषां स्वत्वा-
नुपायत्वस्य लोकसिद्धत्वादिति रागप्राप्तनिषेधे पर्युदासादिसिद्धिकारानापत्तिश्चेति
लाघवमिति । तस्माच्छास्त्रैकसमधिगम्ये स्वत्वेऽसत्यप्रतिग्रहादेस्तदनुपायत्वात्तदर्थे पितुः
स्वत्वाभावः स्यादेवेत्यापागवचौर्याद्यजितं पिबधनाविभागवदसत्यप्रतिग्रहाद्यजितं स्यादप्यवि-
भाज्यत्वम् । लौकिके तु तस्मिन् लोके तेषामपि तदुपायत्वात् सिद्धं तद्विभाज्यत्वमिति
मिताक्षरोक्तं साध्वेव प्रयोजनम् । इदञ्चोपलक्षणम् । पूर्वपक्षे चौर्याद्यजितं पिबधन-
स्वीकारे यथा पुत्रादीनामपि दण्डप्रायश्चित्तं भवत्येव तथाऽसत्यप्रतिग्रहाद्यजिततद-
ग्रहणोपीत्यपि प्रयोजनमवश्येयं अर्जयितुरेव प्रायश्चित्तमित्यभिधानेनोचितत्वात् ।

47. इदन्विह विचार्यम् । स्वत्वस्य लौकिकत्वे चौर्यस्य लोके तदनुपायत्वे
सिद्धे षड्भक्तानशनाद्यापदि यच्चौर्यमनुमतं तेन चोरिते स्वत्वमुत्पद्यते न वा । नाद्यः
लोकेऽनुपायत्वेनावधारितत्तदुत्पत्तेरभ्युपगन्तुमशक्यत्वात् । न हि प्रत्यक्षविरुद्धं शास्त्र-
सङ्ख्येयापि जलादेर्दधिजनकत्वादि बोध्यते । न द्वितीयः अखेन पञ्चमहायज्ञादिप्र-
धानानिष्पत्तेः । न च क्षुत्प्रतिघातमात्रमेव तेन क्रियतां नान्यदलौकिकमिति वाच्यम् ।
श्रिष्टाचारविरोधात् न हि श्रिष्टाः पञ्च महायज्ञाद्यकृत्वा तदुपयुज्यते । यदन्नः पुरुषो
लोके तदग्राह्यस्य देवता इति स्मरणाच्च । अतएव विन्वामिञ्च । श्वजायनीं श्वपच-
गृहात् हृत्वेन्द्रादिदेवोद्देशेन त्यक्त्वा भोष्णामीति मनसिह्यत यदा यथादेवतां तद्गमा-
न्यत्तुं प्रवृत्तस्तदा तुष्टैरिन्द्रादिभिर्दृष्टिः कृष्टा शस्यञ्च तत्क्षणेमेव प्रभृतमभूदि-
त्याख्यायिका पुराणेषु स्मर्यते । शास्त्रैकसमधिगम्ये तु स्वत्वे यथाशास्त्रचौर्यादेरपि
स्वत्वोत्पादकत्वतदभावो न विरुद्धौ । लौकिकस्वत्वतदुपायवादिनरूपभयतः पाश्चादप्यु-
च्यमिति ।

48. अत्र प्रतिविदध्यः । यद्यपि चौर्यस्य स्वत्वोत्पादकत्वं न लोकसिद्धं तथा-
प्यनेनैव सप्तमभक्तानशनाद्ये षड्भक्तानशिनोऽस्य विधानाद् गम्यते । स्वत्वमात्रस्य हि

शास्त्रीयत्वं विरुद्धमतज्ञानानां क्रयादिस्वत्वसाध्यव्यवहारानुपपत्तेः । अतश्चौर्यनिषेधो दण्डपापमात्रबोधक एव । चौर्यस्य स्वत्वोत्पादकत्वाप्रसक्तेर्न तदभावपरः । यथा ब्राह्मण्यस्य सर्वत्र प्रत्यक्षत्वेऽपि जात्युत्कर्षस्थले शास्त्रीयत्वमेव । पुरुषेयत्तानियमस्य शास्त्रैकगम्यत्वात् । यथाऽऽराचार्थाः । एतावन्मात्रनिष्ठागमिकं प्रत्येत्यम् । न ह्ययं पुरुषेयत्तानियमो लोकाप्रमाणगम्य इति । तत्रापि तावत् पुरुषपरम्परारजन्यव्यक्तौ ब्राह्मण्यमभिव्यज्यत इति व्यङ्ग्यवृत्तकभाव एव परं शास्त्रीयः शास्त्रीयवृत्तकज्ञानवतस्ता-दृशव्यक्तौ ब्राह्मण्यप्रत्यक्षमेव । व्यक्तिप्रत्यक्षप्रमुखजातिप्रत्यक्षसामग्रीसम्भारादित्यपि वदन्ति । इह तु चौर्यमात्रस्यैव स्वत्वानुत्पादकत्वग्रहणादृशस्य तस्य स्वत्वोत्पादकतैव शास्त्रेण बोध्यते । न च प्रत्यक्षविरोधः न हि प्रत्यक्षविरुद्धं शास्त्रसदृशेणापि बोधयितुं शक्यमिति वाच्यम् । न ह्यनुत्पादकत्वमपि लोकात् । तादृशेन व्यवहाराभावादन्वयव्यतिरेकगम्या स्वत्वस्य चौर्योपायकता नावगम्यत इत्येतावत् । तथा च पुत्रेष्ट्यादीनां लोकानवगतपुत्रादिजनकता यथा शास्त्रादवगम्यते तेषां दृष्टोपायान्तरजन्यतायामपि तथेष्टाप्यस्तु । स्वर्गाहवनीयादीनामौक्तिकमात्ररूपाणां दृष्टोपायाभावोऽप्यधिक इत्यन्यदेतत् । प्रतिबन्धकप्रतिबद्धदाहादिजनकता यद्योत्तेजकमन्त्राणामधर्वादिशास्त्रगम्या-ऽलोकाप्रमाणगम्यत्वात् उत्तेजकतायाश्च प्रतिबन्धकप्रतिबद्धकार्थजनकतातिरिक्ताया अग्निर्वीच्यत्वात् । शक्तिनाशतदुत्पत्तिकल्पनायामितिगौरवात् ।

49. यत्तु जन्मना स्वत्वं निराकुर्वता जीमूतवाहनेन । क्वचिज्जन्मनैवेति जन्म-निबन्धनत्वात् पितापुत्रस्य सम्बन्धस्य पिढमरणस्य च कारणात्वात्परम्परया वर्णनमिति प्राचीनलिखनाभिप्रायमुक्त्वा कथमुत्पादनरूपेण पिढगतव्यापारेण पुत्रस्वत्वोत्पत्तिरित्याशङ्कोक्तं अन्यव्यापारेणाप्यन्यस्य स्वत्वमविरुद्धं शास्त्रमूलकत्वादस्य । दृष्टञ्च लोकेऽपि दाने हि चेतनोद्देश्यकत्यागादेव दाढव्यापारात् सम्प्रदानस्य ब्रूये स्वामित्वम् । न च स्वीकरणात् स्वत्वं स्वीकर्तुरेव दाढत्वापत्तेः । परस्वत्वापत्तिफलेन हि दानरूपता तच्च फलं सम्प्रदानाधीनम् । यथा हि देवतोद्देशेन त्यागं कुर्वन्नपि यजमानो न होता किन्तु तस्यैव यागस्य होमाभिधाननिमित्तभूतं प्रक्षेपं कुर्वन् ऋत्विगेव ह्येतत्तुच्यते तद्वदत्रापि स्यात् । किञ्च । मनसा पात्रमुद्दिश्येत्यादिशास्त्रे स्वीकारात् प्रागेव दानपदं दृष्टम् । ननु यद्व्यं स्वीकारः । अभूततद्भावे चिप्रयोगादखं खं कुर्वन् व्यापारः स्वीकारो भवति कथन्ततः प्रागेव स्वत्वम् । उच्यते । उत्पन्नमपि स्वत्वं सम्प्रदानव्यापारेण ममेदमिति ज्ञानेन यथेष्टव्यवहाराहं क्रियते इति स्वीकारशब्दार्थः । याजनाध्यापनसाहचर्याश्च प्रतिग्रहस्य स्वत्वमजनयतोऽप्यर्जनरूपता न विरुद्धा । याजनादौ दक्षिणादानादेव स्वत्वात् । पिढनिधनकाशीनं जीवनमेव वा पुत्रस्यार्जनं भविष्यति । किञ्च । भ्रात्रादि-धने तन्मरणान्तरमरणकाशीनजीवनाद्वा भ्रात्रन्तरादेः स्वत्वमकामेनापि वाच्यं तद्वदि-हाप्यस्त्विति ।

50. तदेतदुत्तानमतिविशसितम् । तथा हि शास्त्रमूलकत्वादस्येति तावत् स्वत्वस्य औक्तिकत्वसाधनादेव निराकृतम् । यदपि दृष्टञ्च लोकेऽपीत्यादि तदप्यापात-

सुन्दरम् । न हि प्रतिग्रहीतर्यस्वीकुर्वत्यपि तस्य स्वत्वमुत्पद्यते । पात्रविशेषोद्देशेन
त्यागे तेनास्वीकृतेऽपि तत् स्वत्वोत्पत्तौ परस्मै तस्य प्रतिपादनासम्भवप्रसङ्गात् । यदपि
स्वीकर्तुरेव दाढत्वापत्तेरिति तदप्ययुक्तम् । परस्वत्वापत्तिफलकत्वापारस्य दानत्वात्
सम्प्रदानस्वीकारानुकूलानुमानादिस्थापारस्य दानपदार्थत्वात् तत्प्रयोगपक्षितता तु तस्य
सम्प्रदानस्वीकारमन्तरेण न सम्भवतीति सम्प्रदानस्थापारस्तुष्टकः । न तु स एव
दानशब्दार्थः । यदपि यथा हीत्यादि तदपि न । यजमानकर्तृकाग्निहोत्रहोमादौ
तदविरोधात् । यत्रापि दर्शपूर्णमासादौ त्यागमात्रं यजमानेन क्रियते । चरुहवत्तस्य
प्रक्षेपोऽध्वर्यादिभिस्तत्रापि विविक्तकर्तृकत्वाद्यथास्वं तद्वह्मरविरोधात् । अत्यक्तस्य
प्रक्षेपे परं होमशब्दवाच्यता नास्ति । स तु त्यागः स्वकर्तृकोऽन्यकर्तृको वाऽवच्छेदको-
ऽस्तु न तावता कश्चिदोषः । अतएव यागस्य न प्रक्षेपापेक्ष आत्मनाभो होमस्य तु
तदपेक्षश्च । दानस्य तु प्रतिग्रहीतृस्थापारसापेक्षेतैव । तदभावे दानपदार्थनिष्पत्तेः ।

यच्च किञ्चेत्यादि । तदपि यत्किञ्चित् । उत्सर्गस्यैव तत्र विधानात् न तु दानस्य ।
अतएव दाता तत्फलमाप्नोतीत्यक्तमन्यथा तस्यानुवादत्वापत्तेः । दानत्वेद्वितस्य तत्फल-
भावाप्रसक्तत्वे तत्फलमाप्नोतीति व्यर्थमेव स्यात् । अतस्तत्र जनप्रक्षेपरूपः पात्रोद्दे-
श्यकमुत्सर्गश्च ददातिना विवक्षितो दानत्वनिष्पत्तिस्तु तस्य सम्प्रदानकर्तृकस्वीकारे
सत्त्वेति परमार्थः । अतएवोत्सर्गजे इत्येव तत्र सङ्गस्यवाक्यं शिष्टानां न तु दास्ये इति
सम्प्रददे इति वा । अतः प्रतिग्रहादेव दानस्य फलेऽपि सम्प्रदानस्य स्वत्वमिति
प्रतिग्रहस्यार्जनरूपत्वमविद्वजम् । स्वत्वजनको हि व्यापारोऽर्जनशब्दार्थः । अतएवाह
प्रभाकरः । प्रणयितमिदं केनापि । अर्जनं स्वत्वं नापादयतीति विप्रतिसिद्धमिति ।
अथास्य ग्रन्थः प्रागेव विद्वतः । किञ्च । प्रतिग्रहस्य ममेदमितिज्ञानरूपस्य
दाढत्वापारमात्रोत्पन्नस्वत्ववह्मरार्थतामात्रसम्पादकतायामर्जनशब्दस्य तत्र गौणता
स्यात् । अन्यस्मै तत्प्रतिपादानुपपत्तिश्च पूर्वमुक्ता । तदस्वीकारे प्रागुत्पन्नतत्त्वत्वनाशश्च
कल्प्यः स्यात् । न च दाढत्वापारात् तत्त्वत्वनाशात् साधारणसम्प्रदानस्वत्वोत्पत्तिरव-
श्याभ्युपेया त्वयापि । अपरथैतत्त्वत्वनाशेऽन्यस्य च स्वत्वानुत्पत्तेर्मध्यकस्य तस्य परि-
ग्रहादिनाऽन्यस्य यस्य कस्यापि वनगतास्त्रामिकादृशकाष्ठादाविव तत्र स्वत्वं स्यात्
परिपाणनाप्रसक्तिश्च । तथा मन्मतेऽपि पात्रविशेषोद्देशकत्वाग्रे पात्रविशेषस्योत्पन्नमपि
स्वत्वं तदस्वीकारे नश्यत्यन्यस्य स्वीकारात्तस्योत्पद्यत इति न कोऽपि विरोधः साधा-
रणस्वत्वविनाशासाधारणस्वत्वोत्पत्तिरिवेति वाच्यम् । यतस्तत्र साधारणस्वत्ववह्मर-
भावेन तदुत्पत्तिरप्रमात्रिका नैव स्वीक्रियते गौरवाच्च । किन्तु दातुरेव यथेष्टविनि-
योगार्हस्वत्वापगमेऽपि परस्वत्वापत्तिफलभावे दानशब्दार्थनिष्पत्तेर्विधिभिरस्त्वफला-
र्थिनः प्रतिपादनावधि परिपाणनीयत्वरूपं स्वत्वमस्येव । यथाऽऽते हविषि भस्मसा-
द्भावावधि अस्थुश्चक्षुर्ग्रादिनिषेधाभ्यवनिमित्तदोषभवनानुदोहेन । तथा चान्यस्वत्वा-
नुत्पत्तावपि न मध्यकत्वपरिग्रहाद्यनिवारणादिदोषः । शिष्टाचारोऽप्युभयत्रपरिपाणन-
रूपस्तन्मूलकश्च । न चोत्सर्गमात्रस्य तत्र त्वया विध्यभ्युपगमात्परस्वत्वापादनादरश्च

न स्यादिति वाच्यम् । तादृशोत्सर्गस्यैव विधितात्यर्थविषयत्वात् । होमस्यनेऽप्यन्यथा भस्मसाद्भावानादरापत्तेः ।

यच्च याजनाध्यापनसाहचर्यात्प्रतियुक्तस्यापि स्वत्वाजनकत्वेऽपि गौणमेवार्जनत्वमिति । तदप्यबोधात् । तत्र हि ये ये द्विजप्रभृतीनां भागास्तेषां तेषां तेभ्यो भृतिरूपेणैव दक्षिणाकाले प्रतिपादनम् । परिक्रयव्यवहारोऽप्यतएव स्वामिकर्मपरिक्रय इति जैमिनिसूत्रादौ विस्तरेण निर्णीतएव विस्तरन्तु तत्रैव द्रष्टव्यम् । कर्मकारानतिजनिका भृतिरेव हि परिक्रयः । एवमध्यापनेऽपि शिष्योऽध्यापकादाध्यापनभृतिमेव तत्सन्तोषजननीमध्ययनान्तेऽर्पयन्ति । नियतभृतिकारणे तु भृतकाध्यापनमुपपातकम् । अतएव याजनाध्यापनयोः प्रतियुक्ताद् भृतिशब्दवाच्यनिर्वेशाच्च पृथगभिधानमुभयमिश्रितत्वात् । तेन तयोरपि मुख्यमेवार्जनत्वम् । दक्षिणात्वव्यवहारोऽप्यतएव ऋत्विगध्यापकदेये ।

यदपि भ्रात्रादिधने भ्रात्रन्तरादिस्वत्वोत्पादकत्वं तन्निधनस्य तत्कालीनभ्रात्रन्तरादिजीवनस्य वा क्लृप्तमिति पुत्रादावपि पित्रादिनिधनं तत्कालीनं जीवनं वा स्वत्वोत्पादकमस्तु न त्वक्लृप्तं पुत्रादिजन्मैवेत्युक्तम् । तदपि जन्मनोऽपि स्वत्वोत्पादकत्वस्यावश्यकत्वोपपादनादेव परिहृतम् ।

51. यच्चोक्तमूर्द्धम्पितुस्त्वेत्यादि मनुवचनमपि जन्मनः स्वत्वापादकत्वे न घटते । प्राग्विभागनिषेधार्थत्वे तस्यास्वार्थपरत्वापत्तेः विभागदृष्टार्थत्वेन तद्विधानकालविधानयोरसम्भवात् । विभागस्य पक्षप्राप्तस्य नियमार्थत्वे सहवासविधिविरोधाद्यापत्तेः । तस्मात् पितरि सति मातरि च सत्यां तद्जनस्वाम्याभाव उपरतयोरेव तयोः पुत्रादेस्तद्जनस्वाम्यमिति प्रतिपादनार्थमेव तद्वाच्यमिति ।

52. तदत्युक्तानाभिधानम् । अस्यार्थविधानापत्तेस्तुल्यत्वात् । प्रागस्वातन्त्र्येण कालविधिपरत्वे बाधकाभावात् । इच्छाप्राप्तकालानुवादेऽपि व्यवहारशास्त्रत्वेनाविरोधात् ।

एतेन जातेष्टिवज्जातप्राग्वियोगापत्तिस्वरूपविशेषविरोधादिनिमित्तानन्तर्यबाधकाभावात् पित्रुपरमानन्तरक्षयस्य विभागः प्रसज्येतेत्यप्यपास्तम् । कालविधानेन पित्रुपरमस्य निमित्तत्वाबोधनाच्च । अन्यथा निमित्ते सति नैमित्तिकस्यावश्यकत्वात्पित्रोर्लक्ष्यं विभागकरणे प्रत्यवायोऽपि प्रसज्येत । पतितत्वपारिव्राज्ययोः पित्रस्वत्वनाशोऽप्यधिकः जन्मना स्वत्वं तुल्यमेव । पातित्वे तु प्रायश्चित्तानाचरयत्येव स्वत्वनाशो विभागानर्हता च । अन्यथा त्रयसाध्यप्रायश्चित्तमपि पित्रोः स्वदृष्टेन न स्यात् ।

अतएव मातुर्निवृत्तेरजसीत्याद्यपि कालविधिपरमेव । न तु पातित्वादिवत्तत्र स्वत्वाभावः । स तु लोकतस्य विभागनिषेधाच्च भ्रात्रादिविवेकादि वक्ष्यते ।

53. किञ्च । तदेवं पित्रस्वत्वापगमयकः कालः अपरस्वानपगतस्य पित्रस्वत्वे पितुरिच्छयेति कालद्वयमित्युक्त्वा मध्ये मितार्क्षरोक्तं विभागकालत्रयं दूषयित्वा । तस्मात् पतितत्वनिस्पृहत्वोपरमैः पित्रस्वत्वापगमयकः कालः अपरश्च सति स्वत्वे

तदिच्छात इति कालद्वयमेव युक्तमित्युपसंहरता जीमूतवाहनेनैव पिष्टस्वत्वापगमोऽपि पुत्राणां विभागो हीनकृतः । तत्र पुत्राणाम्पिष्टधने स्वत्वात्पादः कथम् । कथञ्च जीवतोः पिबोरस्वाभ्यप्रतिपादकवचनैः सह न विरोधः । अस्वस्य विभागासम्भवात् कथं तेषां विभागः । पिष्टस्वत्वापगमएवोर्द्धं पितुश्चेत्यनेन विवक्षितोऽतएव न्यतपदं परित्यक्त्योर्द्धमित्युक्तम् पिष्टस्वत्वापगमोर्द्धमित्यर्थः पिष्टस्वत्वापगमश्च तन्निधनादिवत्तस्य पतितत्व-
निस्यूहत्वाभ्यामपीत्यादि स्वग्रन्थे पूर्वापरविरोधश्च न कथम् ।

अत्राप्युपरतस्यूहत्वादिना पुत्राणां स्वत्वम्पिष्टधने भवतीति ज्ञापनादयमेकः काल इति उक्तम् । तत्राप्युपरतस्यूहत्वादिनेत्यनेन पिष्टस्वत्वापगमएव यदि विवक्षितस्तर्ह्यनपगते पिष्टस्वत्वे तदिच्छाऽपरः काल इत्यभिधानविरुद्धम् ।

पिष्टस्वत्वापगमकालीनपुत्रादिजीवनस्यैवार्जनस्य तदीयस्य स्त्रीकारात् पिष्टस्वत्वे सति पुत्राणां तद्धने स्वत्वस्त्रीकारः कथम् । न ह्यनाश्रमित्वमादरजोनिवृत्तिमात्रेण पितुः स्वत्वापगमः पूर्वद्रव्यस्वामिसम्बन्धाधीनं तत्स्वाभ्योपरमे यत्र द्रव्ये स्वत्वं तत्र निरुद्धो दायशब्द इति खोक्तादायशब्दार्थाभावात् पिष्टस्वत्वापगमे यत्र विभागस्तत्र दायशब्द-
प्रयोगोऽपि दुःस्थ इत्यादिबहुव्याकुली स्यात् ।

54. जन्मना स्वत्वस्त्रीकारे तु सर्वमनाकुलमित्यादि सुधीभिरग्रेयम् । अतएव मिताक्षरादौ पूर्वस्वामिसम्बन्धाधीनं यद्धनं तत्र स्वत्वमन्यस्य तदेव दायशब्दवाच्यमित्युक्तं न तु पूर्वस्वाभ्योपरमोऽपि तत्र प्रवेशितः । तत्सिद्धं द्विविधो दाय इति ।

मिताक्षरोक्तविभागकालत्रयसमर्थनन्तु तत्प्रस्तावे प्रपञ्चयिष्याम इत्यन्यसस्ता-
नुप्रसक्तविचारेणेति ।

55. यच्च जीमूतवाहनेनैव । मिताक्षरोक्तम् विभागो नाम द्रव्यसमुदायविव-
याजामनेकस्वाभ्यानां तदेकदेशेषु व्यवस्थापनमिति विभागशब्दार्थः । न च सम्बन्धा-
विशेषात् सर्वेषां सर्वधनोत्पन्नस्य स्वत्वस्य द्रव्यविशेषे व्यवस्थापनं विभाग इति वाच्य-
मित्याशङ्क्य सम्बन्धन्तरसद्भावप्रतिपक्षस्य सम्बन्धस्यावयवेष्वेव विभागव्यङ्ग्यस्वत्वापादक-
त्वात् । कृत्स्नपिष्टधनगतस्वत्वात्पादविनाशकल्पनागौरवात् । यथेष्टविनियोगक्षणाभावे-
नानुपयोगाच्चेति दूषयित्वा उच्यते । एकदेशोपात्तस्यैव भूहिरण्यादावुत्पन्नस्य स्वत्वस्य
विनिगमनाप्रमाणाभावेन वैश्वधिक्यवह्नारानर्हृतया अव्यवस्थितस्य गुटिकापाता-
दिना व्यञ्जनं विभागः । विशेषेण भजनं स्वत्वज्ञापनं वा विभाग इति व्युत्पत्त्यु-
क्तम् ।

56. तदायतत्त्वकृतोपन्यस्य दूषितम् । यत्रास्य स्वत्वं तत्रैव गुटिकापात इति
कथं वचनाभावात्प्रिच्छेतथम् ।

यत्र हि पितुर्निधनानन्तरं तदीयान्वयोरेकमादाय भ्रात्रा यदर्जितं तत्रार्जकस्य
द्वौ भागवपरस्यैकः सर्वसम्मतः । तत्र यदि प्राचीनधनविभागकाले गुटिकापातादर्जकेन
सएवाश्रयः पश्चात्तद्वत्सदा प्रादेशिकस्वत्ववादिमते प्रागर्जकस्यैव सोऽश्रय इति तेनार्जित-
धने कथं भ्रात्रन्तरस्य विभागः । तत्रैवास्वत्वेन तदुत्पन्ने सुतरां स्वत्वाभावादश्वस्य

चाविभाव्यत्वात् । यदि वार्जकेतरेष्वे सोऽश्वो जन्मस्तदा तेनार्जितधनस्य समभागश्च युक्तः । एकस्य स्त्रायार्थेनापरस्याश्वार्थेनार्जकत्वादिति दूषिते ।

बन्धुतत्त्वं सम्बन्धाविशेषात् सर्वसम्बन्धिनां सर्वधनोत्पन्नस्य स्त्रत्वस्य गुटिकापातादिना प्रादेशिकव्यवस्थापनं विभागः ।

एवं ह्यस्तत्त्वधनगतस्त्रत्वोत्पादविनाशावप्यगत्या कथ्येते । संकष्टतायां प्रादेशिक-स्त्रत्वोत्पादह्यस्तत्त्वधनस्त्रत्वोत्पादविनाशाविव ।

तच्च, विभक्तो यः पुनः पित्रा भ्रात्रावैकत्र संस्थितः । पित्रष्ट्येवाथवा प्रीत्या स तु संकष्ट उच्यते ॥ इति दृष्टस्यतिवचने येषामेव हि पित्रभ्रात्रपित्रष्ट्यादीनां पित्रपिता-महोपाजितत्रय्येवाविभक्तं स्त्रत्वमुत्पत्तितः सम्भवति । तस्य विभक्ताः सन्तः पुनः पर-स्परप्रीत्या पूर्वह्यतविभागध्वंसे । यत्तव धनं तन्ममापि यन्मम धनं तत्तवापीत्येकस्मिन् कार्ये एकग्रहि रूपतया स्थितास्ते संकष्टाः । न त्वनेकरूपायां धनसंसर्गमात्रेण सम्भूय कारिणां वञ्चिजामपि संसर्गितम् । नापि विभक्तानां त्रय्यसंसर्गमात्रेण । प्रीतिपूर्वक-तादृग्गमिसन्धिं विनेत्यभिदधता दायभागकृतापि खड्गस्तितम् ।

साधारणस्त्रत्वादेव हि बन्धूनामविभक्तानां भोगं नैव प्रदापयेत् । इति कात्या-यनवचनं यथा श्रुतमेव सङ्गच्छते । यावद्बभूवुस्तत्तद्वधनात्रे स्त्रत्वस्यापि सत्वात् । अत-एवात्र परस्परस्य चौर्यमपि नापद्यन्ते ।

एवञ्च । साक्षित्वव्याप्तिभाव्यञ्च दानं ग्रहणमेव च । विभक्ता भ्रातरः कुर्युर्नवि-भक्ताः परस्परम् ॥ इति नारदवचने परस्परनिरूपितदानादिनिवेधेऽपि न्यायमूक-एव । दानादेः पूर्वमपि देयादौ प्रतिग्रहीनादेः स्त्रत्वसत्वाद्दानप्रतिग्रहादेरसम्भवात् ।

अविभक्तत्वादेव चाविभक्तत्रय्येव यत्कृतं दृष्टादृष्टार्थं कर्म तत्र सर्वेषां फलभा-गित्वम् । तथा च नारदः । भ्रातृव्यामविभक्तानामेको धर्मः प्रवर्तते । विभागे सति धर्मोऽपि भवेत्तेषां पृथक् पृथक् ॥

आशेऽपि । स्त्रावरस्य समस्तस्य गोत्रसाधारणस्य च । नैकः कुर्यात् त्रयं दानं परस्परमतं विना ॥ अत्र समस्तस्येति विशेषणोपादानात् ह्यस्तत्त्वधनगतमेव प्रत्येकस्त्रत्वं क्रीयते ।

तस्मात् तुल्यधनसम्बन्धन्तरसत्त्वेन सम्बन्धिसकाशात् संक्रान्तं धनं तस्यापि ममा-पीति सम्बन्धिना प्रतीयते तद्धिमतौ दानादिकं प्रतिविद्धं स्त्रार्थम् ।

अतो नैकदेशगतं स्त्रत्वमिति ।

57. इदञ्च त्रय्यसमुदायविषयायामनेकस्त्राभ्यानामेकदेशे व्यवस्थापनं विभाग इति वदतो मिताक्षराकृतोऽप्यभिमतमिति कथ्यते ।

इदन्विष्ट विचार्यम् । त्रय्यसमुदायनिरूपितं सामिगतं साम्यम् । सामिनिरू-पितञ्च त्रय्यसमुदाये स्त्रत्वं व्यासग्यदृष्टि प्रत्येकदृष्टि वा । नाद्यः । एकैकस्त्रामित्व-स्त्रत्वाभ्यनाग्रे तन्नाशस्यावशिष्टसमुदायगततदुत्पत्तेश्च कल्पनायामतिगौरवापत्तेः प्रत्ये-कस्य प्रत्येकत्रये क्षणक्षयादियथेष्टविनियोगानर्हत्वापत्तौ अवधारविसम्भादापत्तेश्च ।

न द्वितीयः विभागे सति तावताज्ञातोत्पादकल्पनापत्तेः । स्वस्य सतो विभागो न तु विभागात् स्वत्वमिति ग्रन्थविरोधाच्च ।

अत्र ब्रूमः । प्रत्येकवृत्तीनि सम्बन्धाविशेषात् स्वान्यानि च सन्त्येव । परस्पर-विभागागते परस्परस्यान्यान्यदीयद्रव्ये तानि नश्यन्ति परमरूपपरिवर्त्तनादिनेवेति न काप्यनुपपत्तिः । व्यवस्थापनमपीदमेव अन्यथैकदेश उत्पादनमित्येव वदेत् । अतएव विनाशमात्रकल्पना न तु स्वत्वान्तरोत्पादकल्पना । जीमूतवाहनमते च कुत्र वास्तवं मम स्वत्वमिति विभागात् प्रागनिरूपयान्तदधीनश्रौतस्मार्त्तलौकिककर्म्मोच्छेदः । अनु-मत्या विभागोत्तरकृतया परस्परद्रव्ये परस्परस्त्वान्तरोत्पत्तिस्वीकारे तदुत्पादविनाश-कल्पनागौरवं यत् त्वया मितान्तराकृते प्रत्यापादितं ततोऽपि तवाधिकमापन्नम् । व्यवहारानुपयोगेन समुदायस्वत्वस्य निष्प्रयोजनता त्वयोपन्यस्ता सापेक्षदेशगतस्वत्वा-भ्युपगमे तुल्यैवेति कृतमतिदूरं गत्वा ।

CHAPTER II.

PART I.

1. अथ विभागकालकर्तनिरूपणम् । तत्र मनुः । ऊर्द्धं पितुश्च मातुश्च समेख आतरः समम् । भजेरन् पैटकं रिक्थमनीशास्ते हि जीवतोः ॥ पैटकं पित्रोः सम्बन्धि प्रागुभयोपादानात् । अतएव पितुर्ऊर्द्धमिति पित्रधनविभागकालः । मातुर्ऊर्द्धमिति मातृधनविभागकालोऽभिहितः । चशब्दस्तु कालान्तरसमुच्चयार्थः न तु द्वयोर्ऊर्द्धमिति नियमार्थः । पित्रधनविभागे मातृजीवनस्याप्रतिबन्धकत्वात् । मातृधनविभागे पित्र-जीवनस्य ।

तथा चाह संयुक्तकारः । पित्रद्रव्यविभागः स्याज्जीवनन्यामपि मातरि । न स्वतन्त्रतया स्वाम्यं यस्मान्मातुः पतिं विना ॥ मातृद्रव्यविभागोऽपि तथा पितरि जी-वति । सत्त्वपथेषु यस्मान्न स्त्रीधनस्य पतिः पतिरिति ॥ पत्युरभावेऽपि पुत्रेषु सत्त्वं यतो मातुस्तदने स्वातन्त्र्येण स्वाम्यं नास्त्यतस्तस्यां जीवन्त्यामपि पित्रधनविभागो युक्तः । यतश्चापथेषु सत्त्वं भार्याधने पत्युः स्वाम्याभावस्ततस्तस्मिन् जीवत्यपि पुत्राणां मातृ-धनविभागाधिकार इति भावः ।

अतश्चानीशास्ते हि जीवतोरित्यपि तत्तदने व्यवस्थाया अस्वातन्त्र्यप्रतिपादकं न तस्वत्वप्रतिपादकं जन्मना स्वत्वस्य पुत्राणां पित्रधने व्यवस्थापनात् ।

याज्ञवल्क्यः । विभागश्चेत् पिता कुर्व्यात् स्त्रेभ्यः विभजेत् सुतान् । ज्येष्ठं वा ज्येष्ठभागेन सर्वं वा स्युः समांशिनः ॥ अत्रेभ्यः पिता सुतान् विभजेदिति वदन जीवत्यपि पितरि पितुर्दिष्टा यदा होऽपि विभागकाल इति सूचयति । तदा च

पितैव विभागकर्ता । अस्मान् हि भवेदेषां निर्दोषे पितरि स्थिते इत्यनेन पुत्राणाम् अस्मात्प्रतिपादनात् । निर्दोषे इति विशेषणत्वात्तिद्यादिदोषवति सत्त्वपि पितरि पुत्राणां तत्पारतन्त्र्यभावात्तद्विच्छा यदा वेऽपि विभागकालः पुत्राणाञ्च तदा विभाग-
कर्तृत्वमित्युक्तं भवति ।

अन्योऽपि पुत्रेऽप्युक्त्या विभागकालः पितरि अथानिस्पृहे निवृत्तरमये मातरि च निवृत्तरजस्त्रायाम् । यथाह नारदः । अत ऊर्ध्वं पितुः पुत्रा विभजेयुर्जनं सममिति । पित्रोऽर्धं विभागमुक्ता । मातुर्निवृत्ते रजसि प्रप्तासु भगिनीषु च । निवृत्ते वापि रमयात् पितर्युपरतस्युहे, इति ।

जीमूतवाहनेन तु विनष्टे वाप्यश्वरश्च इति पाठो लिखितः विनष्टे पतिते अश्वरश्च गृहस्थाश्रमरहित इति व्याख्यातश्च । निवृत्ते वापि रमयादिति पाठान्तरमनाकर-
मित्यप्युक्तं तदयुक्तं मिताक्षरादिबहुनिबन्धलिखितत्वात् । पुत्रा धनं विभजेयुरित्यनुषङ्गः ।

गौतमोऽप्यूर्ध्वं पितुः पुत्रा रिक्यं विभजेरित्युक्ता निवृत्ते चापि रजसि मातु-
र्जीवति चेच्छतीत्याह ।

वृहस्पतिरपि । पित्रोरभावे भ्रातृणां विभागः सम्प्रदर्शितः । मातुर्निवृत्ते रजसि जीवतीरपि ज्ञास्यत इति । तथा सरजस्त्रायां मातर्यनिष्कृत्यपि पितरि दीर्घ-
रोगग्रस्तेऽधर्मवर्तिनि पुत्रेऽप्युक्त्या विभागः । यथाह शङ्खः । अकामे पितरि अन्व-
विभागो वृद्धे विपरीतचेतसि रोगिणि चेति । नारदोऽपि । आधितः कुपितश्चैव
विषयासक्तमानसः । अथवाशास्त्रकारी च न विभागे पिता प्रभुरिति ।

२. अत्र पितृपरम एकः कालो निवृत्ते चापि रजसीति द्वितीयो जीवति
चेच्छतीति तृतीय इति मिताक्षरायां जीमूतवाहनात्तं दूषयन् । मातरजो निवृत्तेः
पितृपरतस्युहत्वविशेषत्वात् । त्रिंशद्वर्षो वृद्धेऽन्यां वृद्धां द्वादशवार्षिकीम् । चतु-
र्वर्षोऽष्टवर्षा वा धर्मे सीदति सत्वरः । इति मनुना विवाहकालविधानात् । वनं
पश्चाशतो व्रजेदित्याश्रमान्तरगमनकालविधानाच्च । तदा रजोनिवृत्तेर्मातुरसम्भवे
पितरि वोपरतस्युहे वानप्रस्थे तत्पुत्राणामिच्छया विभागाभावप्रसङ्गात् । निर्विशेष-
मुपरतस्युहत्वमेव पित्रधनविभागकाल इति तूच्यमाने अमुपरतस्युहे पितरि पतिते-
ऽप्यविभागप्रसङ्गात् । अयमप्यपरः काल इत्यभिधाने कालचतुष्टयापत्तिः पितृपरमः
पतितत्वं निःस्पृहत्वमिच्छा चेति । तस्मात् पतितत्वनिःस्पृहत्वोपरमैः पितुः स्त्र्यापगम
एकः कालोऽपरश्च सति तत्त्वत्वे तद्विच्छात इति कालद्वयमेव युक्तमिति ।

तन्मिताक्षराद्विद्वदश्रयापरिज्ञानात् । न हि तेन कालत्रयनियमोऽभिहितः ।
तथेत्यादियत्रेण कालान्तरस्यानुपदमेव प्रतिपादनात् । नियमस्य निर्वीजत्वात् । पित्र-
स्त्र्यापगम एकः कालोऽपरश्चानुपगतश्च पित्रस्त्र्या तद्विच्छात इति कालद्वयमित्य-
यमुक्तम् । निवृत्तरजस्त्रायां मातरि त्वनव्यापत्तेः न हि मातृनिवृत्तरजस्त्रातामात्रेण
पित्रस्त्र्यापगमः । जन्मना स्त्र्यावस्थापनात् पित्रस्त्र्यापगमस्य कालापगमश्चापि-
सम्भवाच्च । एवं दीर्घरोगग्रस्तेऽपि न स्त्र्यापगम इति कालद्वयनियमस्यैवापि दुःस-
माधः । इष्टापत्तौ तद्वचनविरोधः ।

3. यद्योक्तं तेनैव । मातुर्निवृत्ते रजसीति पितामहादिधनाभिप्रायम् । निवृत्ते रजसि पुत्रान्तरसम्भवाभावात्तदानीमपि पितुरिच्छैव पुत्राणां विभागः । अनिवृत्ते रजसि क्रमागतधनविभागे पञ्चाज्जातानां वृत्तिषोपापत्तेः । न चासौ युक्तः । ये जाता येऽप्यजाताश्च ये च गर्भे व्यवस्थिताः । वृत्तिश्च तेऽभिकाङ्क्षन्ति वृत्तिषोपो न विद्यते । इति वचनात् । यतएव पित्रधने काण्डयमतएव मनुगौतमादिभिर्मतपदं परित्यज्यो-
र्द्धमित्युक्तम् । ऊर्द्धं पितुः स्वात्पापगम इत्यर्थः । यदि चास्य पित्रधनविषयता स्यात् तर्ह्यूर्द्धं विभागाज्जातस्तु पितृमेव हरेद्जनमित्यस्य निर्विषयता भवेत् । निवृत्ते रजसि पुत्रोत्पत्त्यसम्भवात् । मातृधनगोचरत्वात्त्यास्य नाशङ्कनीयमेव । मातुरेव निर्जनतापत्तेः । अतो निवृत्ते रजसीति पैतामहधनविषयम् । न चेष्टामनपेक्ष्य रजोनिवृत्तिमात्रं विभागनिमित्तं सम्भवत्वनिष्पत्त्या विभागाभावात् कल्येष्ट्येत्यपेक्षायांमूर्द्धं पितुः पुत्रा रिक्तं विभजेयुर्निवृत्ते रजसि मातुर्जीवति चेष्टसीति गौतमवचनात् पितुरेवेष्टात इति निर्णीयत इति पितामहादिधनविभागस्यापि पित्रोदभाव इत्येकः काणः । मातु-
र्निवृत्ते रजसि पितुरिच्छात इति काण्डयमेवेति ।

तदप्यनभियुक्तप्रभेदेनम् । वृत्तिषोपापत्तेः पित्रधनेऽपि तुल्यत्वात् । ऊर्द्धं वि-
भागादित्यस्य निर्विषयत्वापत्तेरपि पितामहादिधनेऽपि तुल्यत्वात् । सस्युहे पितरि पातित्वादिदुष्टे पितामहधनेऽपि पुत्रेष्ट्या विभागस्य सक्कसम्मतत्वादवग्रहाच्चात्पात्र । वस्तुतस्तु पितामहादिधने भूयां पितामहोपात्तेत्यादिना सदृशस्य पितापुत्रस्वात्मस्य वक्ष्यमावृत्तात् पुत्रेष्ट्यापि तस्य विभाग उचित एव । यत्तत्र व्याख्यानान्तरमनीश-
्वरस्य तद्वनगोचरत्वादिकाख्यनं तत्सर्वं तद्वचनविवेचने निराकारिस्थानः ।

4. वयन्तु स्वातन्त्र्यार्हे पितरि जीवति तदिच्छैव विभागनिमित्तम् । पातित्व-
पारिग्रह्यादिभिरुद्वेगैर् पुत्रेष्ट्यापि । तदुपरमे तु स्नेष्ट्या निमित्तत्वमर्थसिद्धमिति काण्डयमेवानेन प्रकारेण । अन्यथा बह्वनामुपरतस्युहत्वादीनां विकल्पसमुच्चयादि-
कल्पनानुपपत्तौ विघ्नेष्वविशेष्यभावाद्यवस्थापत्तौ बद्धाङ्गुलीभावः । अतएव
अपिचने केषांचिदेवोपादानमनुपादानश्च केषांचित् सङ्गच्छते ।

एकमूलकल्पनाकाधवेनोपरतस्युहत्वादिभिः पितुः स्वातन्त्र्यभावस्यैकस्य सर्वैरुप-
लक्ष्यत्वात् । अनीश्वरस्य हि जीवतोः निर्द्वावे पितरि स्थिते । जीवतोऽपि शस्यते
इत्यादिवचनस्वरसोऽप्येवमेव ।

अतएव पित्रोर्जीवतोर्भाट्टाणां सदृशासौ मुख्यस्तदनुमत्त्यादिना ज्येष्ठस्य कार्य-
क्षमस्यान्यस्य वा पुत्रस्य स्वातन्त्र्यमन्येषां तदनुरोधवृत्तित्वमिति च पक्षद्वयमुक्तवन्तो
व्यासादयः । भाट्टाणां जीवतोः पित्रोः सदृशासौ विधीयते इति व्यासः । जीवति
पितरि पुत्राणामर्थादानविसर्गाद्यपेक्षु न स्वातन्त्र्यम् । कामन्दिने प्रोषिते आर्त्तिङ्गते
ज्येष्ठो वार्थीचिन्तयेदिति हारीतः । शङ्खनिखितौ तु स्पष्टतममाहतुः । पितर्यशस्ते
कुटुम्बव्यवहारान् ज्येष्ठः प्रतिजुर्यादगन्तरो वा कार्यक्षमस्तदनुमतो न त्वकामे पितरि
रिक्तविभागो वृद्धे विपरीतचेतसि दीर्घरोमिणि वा ज्येष्ठश्च पित्रवदर्थान् पाण्ये-
दितरेषांमूलं हि कुटुम्बमस्तन्माः पित्रमन्तो मातुरप्येववस्थिताया इति ।

तस्माद्यथोक्तरीत्या विभागस्य कालत्रयमेवेति ब्रूमः ।

5. अत्र मनुवचने समेत्येत्तनेन पाक्षिकं साहित्यमनुयते बद्धत्ववत् । अन्य-
थैकोऽप्या इत्येष आत्रोर्विभागो न स्यात् । सममिति तु नियम्यते । तच्च विवक्ष्यमः ।

6. यत् पितोरिति द्विवचननिर्देशात् सोदरभाट्ट्यां पित्रधनविभागोऽपि
मातुरभावस्य कार्यः । न तु मातृधनविभागार्थं मातुरभावोपादानम् । जीवतोऽपीत्यस्य
मातृधनगोचरत्वानुपपत्तेरन्यधनगोचरत्वमवश्यं वाच्यमतो यत्रैव पितोरभावो निमित्तं
तत्रैव जीवतोऽपीत्यपिशब्देन जीवनस्यापि प्रशस्तत्वकीर्तनात् मातुरभावो मातृधने
व्याख्येय इति जीमूतवाहन आह ।

तदसम्बद्धम् । पितुश्च मातुश्चेति मनुवचने पृथङ्निर्देशादन्यथापि द्विवचनस्य
विभागसम्बन्धविवक्षाभावेन व्याख्यानं युक्तम् । इतरथैकतरधनेऽन्यतराभावस्यादृष्टा-
र्थत्वापत्तेः ।

यथोक्तं जीवतोऽरित्यादेर्मातृधनगोचरत्वानुपपत्तेरित्यादि । तस्यापि कोऽभि-
प्रायः । मातुः पितरि जीवत्यस्मात्तन्नाम्न तद्धनगोचरत्वमिति यदि तर्हि सत्त्वपत्येव
भार्याधनेऽपि पितुः स्थायं तदभावस्यापि तत्रानुपयोगादन्यविषयत्वापत्तिः ।

अभिप्रायान्तरनवसम्भवदुक्तिकमेवेति वक्ष्यामः । तस्मादृष्टार्थत्वात्तद्धनविषय-
स्य तदभावः संयहकाराद्युक्तो युक्तः ।

7. यथा च पित्रोर्जीवतोर्भाट्ट्यां सहवासो मुख्यस्तथा तदूर्ध्वमपि । तथा च
शङ्खलिखितौ । कामं सहवसेयुरेकतः संहता दृजिमापयेदन्निति । संहताः सह-
वसन्तो ब्रथोपचयसाहाय्यादिना परस्परकृतेन दृजिमाप्नुयुरित्यर्थः । नारदोऽपि ।
विभ्रयाद्वैकतः सर्वान् ज्येष्ठो भ्राता यथा पिता । भ्राताशक्तः कनिष्ठो वा शतयपेक्षा
कुलस्थितिः ॥

मनुरपि । ज्येष्ठस्य तु मृच्छीयात्पितृव्यं धनमशेषतः । शेषास्तनुपजीवेयुर्यथैव
पितरं तथा ॥ ज्येष्ठेन जातमात्रेण पुत्री भवति मानवः । पित्रुभारुण्यैव स तस्मात्
सर्वमर्हति ॥ यस्मिन्मृगं संग्रहयति येन चानन्यमनुते । स एव धर्मजः पुत्रः कामजा-
नितरान् विदुः । पितेव पाणयेत् पुत्रान् ज्येष्ठोभाट्टन् यवीयसः । पुत्रवत्तापि वर्त्तेरन्
ज्येष्ठे भ्रातरि धर्मतः । ज्येष्ठः कुलं वर्द्धयति विनाशयति वा पुनः । ज्येष्ठः पूज्यतमो
लोक्ये ज्येष्ठः सद्गिरिर्वाहितः ॥ यो ज्येष्ठो ज्येष्ठदत्तिः स्यान्मातेव स पितेव सः ।
अज्येष्ठदत्तिर्यत्न स्यात् स सम्युज्यत्न बन्धुवत् । यो कोभादिनिजुर्ध्नीत ज्येष्ठो भाट्टन्
यवीयसः । सोऽज्येष्ठः स्यादभागश्च नियन्तव्यश्च राजभिः ॥

इत्यादिवचननिचयाद् गुणज्येष्ठवशवर्त्तितया सर्वेषां सहवासाः प्रशस्ताः ।

धर्मदृजिकामनया तु विभागः कार्य इत्याहुर्तुर्ननुप्रजापती । एवं सहवसेयुर्वा
पृथग्वा धर्मकाम्यथा । पृथग्विवर्द्धते धर्मस्तस्माद्धर्मा पृथक् क्रिया । धर्मश्च देवाद्यर्चन-
रूपस्तस्यैव सहवासे पृथक्त्ववभात् । तथा च दृश्यते । एकप्रागेन वसतां पित्रदेव-
दिजार्चनम् । एवं भवेदिभक्तानां तदेव स्याद् मृष्टे मृष्टे । इति । यत् संयहकारेणा-

भिहोत्रादिधर्मद्विरपि धर्मद्विष्यन्नेन गृह्यत इत्युक्तम् । यदाह । क्रियते खं विभागेन पुत्राणां पैतृकं धनम् । खत्वे सति प्रवर्तन्ते तस्माद्ग्रन्थाः पृथक् क्रिया इति ॥ प्रवर्तन्ते साध्यन्ते अभिहोत्रादिक्रिया इति विशेष इति । तत्तु जन्मनैव पुत्राणां पितृधनस्वादिभागात् प्रागपि औत्सर्गिककर्माधिकारं प्रतिपादयद्विरक्षाभिः प्रागेव प्रत्यासि । तस्मात् पञ्चमहायज्ञादिधर्मस्य धर्मशब्देनात्र ग्राह्यः ।

८. दत्तासु भगिनीषु चेति तु न कालार्थं किन्तु तासामवश्यं दानार्थम् । यथा, यच्छेष्टं पितृदायेभ्यो दत्तञ्च पैतृकं ततः । आह भिक्षुदिभक्तव्यम् न स्याद्यथा पिता इति ॥ नारदवचनमृषादानावश्यकत्वात् न विभागकालार्थम् ।

९. पिता च यदि खेच्छया पुत्रान् विभजति तदापि निरङ्कुशेणा नोपादेया किन्तु । ज्येष्ठं वा श्रेष्ठभागेन सर्वे वा स्युः समांशिन इति । पक्षयोर्मध्ये यः पक्ष इष्टः स ग्राह्य इति योगीश्वरवचनार्थः ।

ज्येष्ठं श्रेष्ठभागेन मध्यमं मध्यमभागेन । कनिष्ठं कनिष्ठभागेन । सर्वे वा ज्येष्ठादयः समांशभाजः कार्य्या इति विद्वान्श्वराचार्याः ।

प्राच्यास्तु खेच्छयेति पृथक्पक्षान्तरं ज्येष्ठादिभागसमभागौ च द्वौ पक्षाविति पक्षत्रयमतस्य ज्येष्ठं वेति प्रथमो वाक्यशब्दः खेच्छयेति पक्षापेक्षया समञ्जसो वक्ष्यमाणपक्षापेक्षत्वे क्लृष्टः स्यादित्याहुः ।

उपपत्तिश्च तत्र वदन्ति । पितैव वा स्वयं पुत्रान् विभजेदयसि स्थितः । ज्येष्ठं वा श्रेष्ठभागेन यथा वास्य मतिर्भवेदिति ॥ नारदवचने । ज्येष्ठं वेत्यादिर्नैकं विषयविभागप्रकारमुपन्यस्य यथा वास्येत्युक्तेरन्योऽपि न्यूनाधिकभागः पितुरिच्छयास्तीति गम्यते । हारीतोऽपि । जीवन्नेव वा विभज्य वनमाश्रयेद् दृष्टाश्रमं वा गच्छेत् स्वल्पं वा संविभज्य भूयिष्ठमादाय वसेद् यद्यपदश्येत् पुनस्तेभ्यो गृह्णीयादिति । दृष्टाश्रमः पारित्यज्यम् । उपदश्येद् ब्रह्माभावेन क्षीणो भवेत् । अत्रापि स्वल्पं वेत्यादिपक्षान्तरमुक्तम् । तस्मात्तदेकमूलकतानुरोधेन योगीश्वरवचनेऽपि तत्संग्रहायेच्छयेति पृथक्पक्षस्य युक्त इति ।

तदसत् । वाक्यशब्दावद्वेधापि व्युत्पत्तेर्नासमञ्जसः । या चोपपत्तिरुक्ता साप्युक्ता । यदि वचनान्तरापात्तपक्षान्तरसंग्रहार्थमिच्छेत्वेत्यस्य भवेदुत्तराहं अर्थमेव स्यादुक्तपक्षइयस्यापि वचनान्तरापात्तत्वादिच्छेत्वेत्यनेन तयोरपि संग्रहरुम्भवात् । तदितरपक्षसंग्रहार्थत्वे मन्दप्रयोजनता स्यादेव । इच्छाया निरङ्कुशत्वेनानियमवारणाय वचनान्तराणोचनं विना तदर्था निर्वाहात् । सोपात्तपक्षइये व्यवस्थानिरासार्थतयेच्छयेति व्याख्यायमाने वचनान्तराणोचननावश्यकत्वात् । न च विकल्पोक्तैवेच्छाणां भेद इच्छयेति निरर्थकमिति वाच्यम् । उत्तराहंवैयर्थ्यापेक्षया व्यवस्थितविकल्पनिरासाय स्वाकाशोपात्तपक्षइयविवक्षिततया तदनुवादस्यैवोपपन्नतरत्वात् ।

नारदाद्येकमूलकता तु विद्वान्श्वरव्याख्यानेऽपि नापैति । तदुक्तपक्षइयस्य वचनान्तरेऽप्युपादानात् । न च निरङ्कुशेणात्रमेव पक्षान्तरं योगीश्वरवचनार्थं-

ऽस्त्विति वाच्यम् । अथवाशास्त्रकारी च न विभागे पिता प्रभुरित्यस्य निर्विषयता-
युतेः । इच्छामात्रस्य शास्त्रीयत्वेऽप्यथाशास्त्रकारित्वाप्रसक्तेः । जीवद्भिभागे तु पिता
नैकं पुत्रं विशेषयेत् । निर्भाजयेच्चैवैकमकस्मात् कारखं विनेति ॥ कात्यायनवचनो-
ऽपि निर्विषयता स्यात् इच्छया एककारत्वात् । न विशेषयेच्छास्त्रीयव्येष्टभागाद्यति-
रिक्तैश्चैकविशेषवत्त्वं न कुर्यात् । कारखश्च शास्त्रोक्तं पातित्यादिकं विनाऽकस्मात्
क्रोधात् सुभगापुत्रोद्वादिना वा न निर्भाजयेद्भागरहितं न कुर्यादित्यर्थः ।

यत् । न्यूनाधिकविभक्तानां धर्मः पिष्टकृतः स्मृतः । इति योगीश्वरवचनं तदपि
धर्मोद्धर्मादनपेतत्वेत् पित्रा कृतः कृतश्च स्मृतो न निवर्तते । अधर्मस्त्वयथाशास्त्रकृतो
निवर्ततएवेत्यभिप्रायइति विज्ञानयोगिभिरेव व्याख्यातम् ।

आधितः कुपितश्चैवत्यादिवचनानुरोधात् । एवम् । समन्यूनाधिका भागाः पित्रा
येषां प्रकल्पिताः । तथैव ते पात्रनीया विनेयास्ते स्मरन्त्या ॥ पित्रैव तु विभक्ता ये
समन्यूनाधिकैर्जनैः । तेषां सत्यं धर्मः स्यात् सर्वस्य हि पिता प्रभुरिति ॥ दृष्टस्यति-
नारदवचने अपि व्याख्येये । श्लेष्ठादिविभागेऽपि पित्रा श्लेष्ठादिभ्यो दत्तोऽन्यैरनुग्रहो न
कार्यः । समांशविभागे वा श्लेष्ठादिभिरिति तात्पर्यार्थः अतएव नारदस्तेषां स एव
धर्मः स्यादित्याह ।

श्लेष्ठादिभागश्च मनुनोक्तः । श्लेष्ठस्य विंश उद्धारः सर्वत्रत्याश्च यद्वरम् । ततोऽङ्गं
मध्यमस्य स्यात् तुरीयन्तु यवीयस इति ॥ समांशपक्षं बौधायन आह । मनुः पुत्रेभ्यो
दायं अभजदिति समोऽंशः सर्वेषामविशेषादिति । मनुः पुत्रेभ्यो दायं अभजदिति
श्रुतौ विशेषाश्रयत्वात् सर्वेषां पुत्राणां समोऽंश इत्यर्थः ।

10 यदि पिता श्लेष्ठ्या समांशेन पुत्रान्विभजते तदा स्वपत्नीभ्यः पत्रसममंशं
दद्यादित्याह याज्ञवल्क्यः । यदि कुर्यात् समानंशान् पत्न्यः कार्य्याः समांशिकाः । न
दत्ता स्त्रीधनं यासां भर्ता वा श्वयुरेव वा । यासां भर्ता श्वयुरेव वा स्त्रीधनं प्रीत्यादिना
न दत्तम् । भर्तादिग्रहणमुपपन्नञ्च वक्ष्यमावस्त्रीधनग्रन्था इत्यर्थः । तासां पत्नीनां पुत्र-
समांशभागमात्रं नियम्यते । तथा च यदा श्लेष्ठभागादिनापि पिता पुत्रान् विभजति
तदापि श्लेष्ठभागाद्युद्धृतोद्धृतोद्धारोद्धारसमुदायात् पुत्रसमानेषांशान् पत्न्यो कभन्ते
न चश्लेष्ठभागादिकमित्यर्थः पर्यवस्यति ।

यस्तु पत्न्याः श्लोद्धारः परीभाख्यादिकमपि पत्नी कभते । तथा चापस्तम्बः ।
परीभाख्यं ऋद्धेऽणश्चारेो भार्याया इति । परीभाख्यम्भोजनपात्रादि यदसाधारणं
यस्या अणश्चारेऽप्यसाधारणस्तद्विवेचयिष्यते ।

न च पक्षद्वयेऽप्येतावता पुत्रसमांशित्वं पत्नीनां विज्ञानेश्वरेणोक्तमिति यदि
कुर्यात् समानंशानिति समांशानुवादो व्यर्थः पत्न्यो श्लेष्ठांशादि न कभन्ते इत्येताव-
न्मात्रमेव वाच्यमिति युक्तम् । यतः एवं समुद्धृतोद्धारो समानंशान् प्रकल्पयेत् । उद्धार-
ोऽनुद्धृतो त्वेषामियं स्यादंशकल्पना ॥ एकाधिकं हरेच्छ्लेष्ठः पुत्रोऽध्वर्जन्ततोऽनुजः ।
अंशमश्रं यवोयांस इति धर्मोक्तवक्ष्यत इति मनुना । द्वांशौ वा पूर्वजः स्यादेकैकम्

इतरेषामिति । गौतमेन अथ भ्रातृणां दायभागो ह्यंशौ हरेज्येष्ठो गवान्धस्य चात्र दशममजावयो ऋहश्च कनिकस्य कार्त्तयसं ऋहोपकराणि च मध्यमस्येति । वशिष्ठेन ज्येष्ठस्यांशोऽधिको देयः कनिकस्य वरः स्मृतः । समांशभागः श्रेष्ठाः स्युरप्रता भगिनी तथेति ॥ नारदेन चोद्धारमृते विधमभागमात्रमुक्तं तद्यदाक्रियते तदा पत्नीनामंशाभावप्रतिपादनार्थं यदि कुर्यात् समानंशानित्युक्तमिति न दोषः ।

अतएव भ्रातृणामविभक्तानां यद्युत्थानम्भवेत् सद्यः । न तत्र विधमं भागं पिता दद्यात् कथञ्चनेति मनुना सर्वेषां भ्रातृणां अथार्जने यदि सद्यः समानमेवात्थानमुद्योगो भवेत् तदा पितुर्विधमविभागदानप्रतिषेधकमनुवचनव्याख्याने जीमूतवाहनेनात्तमुद्धारस्तु पित्रा दातव्यएव । तस्य विभागव्यवहाराभावात् ।

न्यूनाधिकविभागस्यैव निवेधादिति । तस्माज्ज्येष्ठं वा ज्येष्ठभागेनेति याज्ञवल्क्याद्युक्त उद्धारोऽपि समांशभागिता पुत्राणामस्येवेति तत्रापीदं वचनं प्रवर्त्ततएव ह्यंशादिपक्षे परं न प्रवर्त्तत इति विज्ञानयोगिनामाश्रयः ।

दत्ते तु स्त्रीधने दत्ते त्वर्जं प्रकल्पयेदित्यत्रार्जदानं वक्ष्यते । यद्यपि तदाधिवेदिको भर्त्रा दीयमाने वक्ष्यते तथाप्याकाङ्क्षायां समानव्यायत्वादत्रापि योज्यम् । बोधायनः । बह्वनामेकधर्माणामेकस्यापि यदुच्यते । सर्वेषामेव तत् कुर्यादेकस्या हि ते स्मृता इति ॥

भ्रातृणामविभक्तानामित्यादिमनुवाक्ये सहात्थानं सर्वेषां विभागप्रार्थना यदि भवतीति जीमूतवाहनेन तदनुयायिना दायतत्त्वकृता च व्याख्यातम् । यदि पुनः पितरि जीवति पुत्रा एव विभागमर्थयन्ते तदा विधमविभागः पित्रा न दातव्य इति वदता । तत्र सद्यश्चवैयर्थ्यं उत्थानशब्दस्य चोद्योगवाचिनोऽपि भागप्रार्थनापरत्वमन्यायमित्यस्माद्याख्यानमेवादत्तमम् । तथा च । सामान्यार्थसमुत्थाने विभागस्तु समः स्मृतः । इति योगीश्वरवचःसम्बादोऽपि कथ्यते । तस्यास्मदभिमतार्थतयैवोपपत्तेः ।

दत्ते त्वर्जमित्यत्राप्यर्जशब्दः समप्रविभागवचनो न भवति अतश्च यावता पूर्वदत्तमिदानीं दीयमानश्च समम्भवति तावदेयमिति मिताक्षरायामुक्तं । तत्रायमाश्रयः यद्यपि नपुंसकस्यार्जशब्दस्य पुंस्यर्जोऽर्जं समेऽंशक इति कौषात्समांशवाचित्वमस्ति । तथापि कदाचित् तासां पुत्राधिकधनत्वं कदाचित्तदूनधनत्वमवस्थितमर्जनियमस्य चादृष्टार्थत्वं मा प्रसाङ्गीदिति पुत्रसमांशितायामेव तात्पर्यमिति ।

अत्र मदगरत्नाकार आह । पत्न्यहति वञ्चवचनात् प्रतिपत्ति समानंशान् पिता ऋजीयात्तु तु ताभ्यः पृथक्कृत्वांशो दातव्यः । जायापत्योर्विभागो न विद्यत इति हारीतवचनविरोधापत्तेरिति ।

तन्न । नात्र जायापत्योर्विभाग उच्यते येन हारीतवचनविरोधः स्यात् किन्तु पत्यैव पुत्रविभागसमये ताभ्यस्तत्समांशदानं प्रीतिदानवत् । अतएव स्त्रीधने दत्ते त्वर्जमित्युक्तमिति न कोऽपि दोषः ।

11. यस्तु जीवति पितरि पुत्रेणैव विभागः स वैधन्यान्नवज्ञानानुनिर्दिष्टो रजसीति मनुवचने समशब्दानुवङ्गाच्च समएव ।

योऽपि पितुर्लुङ्गं विभागः योऽपि समश्च । पूर्वोदाहृतमनुवचने सममित्यभिधानात् । हारीतोऽपि । समानो मृते पितरि रिक्त्वविभागः । पैठीनसिरपि । पैठके विभज्यमाने दायाद्ये आहृत्यां समो विभागः । याज्ञवल्क्योऽपि । विभजेरन् सुताः पित्रोर्लुङ्गं मृकमृकं समम् । पित्रोर्लुङ्गमिति कालः सुता इति कर्त्तारः सममिति प्रकारनियम इति मिताक्षरा ।

मनु मनुनैव पितुर्लुङ्गं विभागमुपक्रम्य ज्येष्ठश्च तु गृह्णीयात् पितृयं धनमशेषतः । शेषास्तमुपजीवेयुर्यथैव पितरं तथेति सहवासपक्षं मुख्यमुक्त्वा ज्येष्ठस्य विंश उद्धार इत्यादिना विषमविभागोऽप्युक्तस्तत्कार्यं समनियम इति चेत् । उच्यते । यद्यप्ययं विषमभागो जीवत्यजीवति च पितरि शास्त्रदृष्टस्तथापि वचनान्तरानुरोधात्कालौ समश्चेति नियमः । अस्मर्ग्यं लोकाविहितं धर्ममप्याचरेन्न त्विति योगीश्वरवचनात् ।

अत्र लोकापदेन युगमुच्यते । युगान्तरे धर्ममपि युगान्तरे यद्विहितं प्रतिविद्धं तन्नाचरेदित्यर्थः । अन्यथा धर्मत्वास्मर्ग्यत्वयोर्थाधातः । शास्त्रविहिते तदभिज्ञविद्वेषो बाधितश्च । तदनभिज्ञया मरणविद्वेषस्तु नास्मर्ग्यत्वापादकोऽप्रीक्षोमादिहिंसदावतिप्रसङ्गादित्यादिदूषणं स्यात् । अतश्च मिताक्षरायां मधुपर्कपञ्चमधगवानाभ्यादिकानिबर्ज्यमेव लोकाविहितत्वेनोदाहृतम् ।

कानिबर्ज्येषु च पुनरुदाहृदिकमक्षतादीनां यत्रोक्तं तत्र ज्येष्ठांशद्वारादिकमपि । यथा चादिपुराणे । ऊढायाः पुनरुदाहे ज्येष्ठांशो गोबधस्तथा । कालौ पक्षे न कुर्वीत आहृताया कमण्डलुः ॥ स्मृतिसंग्रहेऽपि । यथा नियोगधर्म्मो नो नानुबध्ना बधोऽपि वा । तथोद्धारविभागोऽपि नैव संप्रति वर्त्तते ॥ नियोगधर्म्मो आहृतायां वाग्दत्तायां मृतपतिकायां गुर्वादिनियोगेन विधिना गमनम् । मैत्रावरुणौ गामनुबध्नां वशामालभेतेति विहितो गोबधः । सम्प्रति कालौ ।

अतश्चापस्तम्भो जीवन् पुत्रेभ्यो दायं विभजेत् सममिति खमतमुक्त्वा ज्येष्ठो दायादइत्येकइति हस्तधनग्रहणं ज्येष्ठस्येकीयमतमुपन्यस्य देशविशेषे सुवर्णं गावः हस्तम्भौमं ज्येष्ठस्य रथः परोभाण्डं पितुर्गृहेऽलङ्कारो भार्याया ज्ञातिधनक्षेत्रेकमतत्वेनैवोद्धारविभागं दर्शयित्वा तच्छास्त्रविप्रतिविद्धमिति निराकृतवान् । शास्त्रविप्रतिषेधश्च स्वयमेव विवृतवान् । मनुः पुत्रेभ्यो दायं अमजदित्यविशेषेण श्रूयत इति । तस्मान्न विषमविभागः शास्त्रदृष्टोऽपि कलावनुकुलः ।

यत्तु मिताक्षराकृता श्रुतिविरोधेत्युक्तं तद्विचार्यम् । श्रुतिविरोधे हि सति युगान्तरेऽपि तस्याननुकूले तद्गोचकवचनानां सर्वथाऽप्रामाण्यमेव स्यादिति कानिबर्ज्यतयोपन्यासो विवदः । न वात्यन्तं श्रुतिविरोधोऽपि । अविशेषश्रवणे सति समं स्यादश्रुतत्वादिति न्यायकभ्यत्वात् समत्वस्य ।

स्मृतिचन्त्रिकायान्तु बौधायनोदाहृतं विषमविभागप्रतिपादकमपि श्रुतान्तरं निखितम् । ज्येष्ठत्वादाधिक्येऽपि श्रुतान्तरमित्याह स एव । धनमेकमेकमुद्दरेज्येष्ठः तस्मात् ज्येष्ठं पुत्रं धनेन निरवसाययतीति श्रुतेरिति । धनमेकमेकमिति वदन् श्रुति-

वाक्यगतं धनेनेत्येकवचनं विवक्षितमिति सूचयति । निरवसाययति तोषयतीत्यर्थं इति ग्रन्थेन ।

जीमूतवाहनस्तु यदा भक्त्यतिशयादिना भ्रातृश्यामनुमतिस्तदोद्धारार्दिर्विषम-
भागोऽतएवाद्यतनानां भक्त्याद्यभावादुद्धारार्ह्येष्टाभावाच्च समभागएव लोके दृश्यते
इत्यादिना ग्रन्थेनानुमत्यनुमतिभ्यां विषमसमभागयोर्ह्यवस्थामाहुः तत्तु तथा सति
पुत्रेच्छायाएव प्रयोजकत्वापत्तेः पूर्वोर्द्धविरोधादनादेयम् । पित्रिच्छायाः स्वतन्त्रपक्षा-
न्तरपरत्वन्तु प्रागेव निरासि ।

12. पित्रा पुत्रेभ्यः स्वार्जितधनविभागं ददता स्वयमंशद्वयं ग्राह्यमित्याह
नारदः । द्वावंशौ प्रतिपद्येत विभजन्नात्मनः पितेति । बृहस्पतिरपि । जीवद्भिभागे तु
पिता गृह्णीतांशद्वयं स्वयमिति ।

पितुरंशद्वयग्रहणमेकपुत्रविषयमित्याह तुः शङ्खनिखितौ । स यद्येकपुत्रः स्याद्
द्वौ भागावात्मनः कुर्यात् । व्यवहारपारिजातकार इदं वचनमेवं व्याचष्टे । एकशब्दो
ऽत्र श्रेष्ठवाची । तथा च यदि पुत्रो गुणवत्तया धनार्जनशक्तस्तदा तेन सह विभागे
पित्रांशद्वयं ग्राह्यमिति ।

जीमूतवाहनस्तु एकस्य पुत्रः एकपुत्र एकपितृक चौरस इति यावत् । न पुनः
एकः पुत्रो यस्येति बह्विहीनस्तस्यान्यपदार्थप्राधान्येन षष्ठीतत्पुरुषाद् दुर्बलत्वात् । तथा
च क्षेत्रजस्य व्यावृत्तिस्तस्य द्विपितृकत्वात् । तथा चौरसपुत्ररूपः पिता स्वपितृधने
भागद्वयं गृह्णीयाद्ग तु क्षेत्रज इति व्याचक्ष्यौ ।

तदसत् । तथा सति पितामहधनगोचरतास्य स्यात् तत्र च सदृशं स्वाम्यं पिता-
पुत्रयोरित्यौरसस्यापि पितुः पुत्रसमांशताया व्यवस्थापयिष्यमाणात्वात् । तथा चागत्या
बह्विहीनहिरेवाख्येयः ।

पिताक्षराहता त्विदं वचनमनादृतमेव ।

कात्यायनः । द्वांशहरोऽर्द्धहरो वा पुत्रवित्तार्जनात् पिता । मातापि पितरि
प्रेते पुत्रतुल्यांशभागिनीति ॥ अत्र जीमूतवाहनः । पुत्रस्य वित्तार्जनात् पुत्रार्जितेऽपि
वित्ते स्वार्जितइव पितुरंशद्वयमित्यस्यार्थो न तु पुत्रश्च वित्तश्च तयोरर्जनादिति ।
अनर्जितपुत्रस्यापि भ्रातृभिर्विभागे वित्तार्जकतयांशद्वयस्येष्टत्वात् । अतो विभागार्ह-
सम्बन्धिनि विद्यमानेऽर्जकस्य द्वांशादिहरत्वमसति तु सर्वहरत्वमिति वाच्यं तथा सति
पितृपुत्रपदयोः प्रमत्तगीतता स्यात् । किञ्चार्जनं स्वत्वहेतुभूतो व्यापारः । अर्जनं
स्वत्वं नापादयतीति विप्रतिषिद्धमित्यभिधानात् । न च पुत्रेषु स्वत्वमस्तीति सर्वस्वदाने
दर्शितमतस्तत्र गौणमर्जनपदं वित्ते च मुख्यमिति सङ्गदुच्चरिते वैरूप्यमयुक्तम् । न
च पुत्रस्यार्जकत्वादेवांशद्वयप्राप्तेः पितुस्वास्वादचनानादृतेऽपि वचनान्तरादेव भागद्वय-
सिद्धेर्वचनमिदमनर्थकमिति वाच्यम् । एतद्वचनमन्तरेणापि पुत्रधने पितुर्भागद्वया-
प्राप्तेरस्य सार्थकत्वात् इत्याह ।

तत्र । दन्वापेक्षया षष्ठ्यर्थलक्षणावतो भवदुक्तसमासस्यायुक्तत्वात् । यच्चानर्जित-

पुत्रस्त्रेष्वादिद्वन्द्वयं तदत्यसम्भ्रमम् । आहमाग्राद्यविषयकत्वादस्य । पित्रधनप्रप्ता-
वात् । न चैवं पुत्रपदं व्यर्थं विचारजनस्त्वेव द्वांश्चरत्वे हेतुलोपपत्तेरिति वाच्यम्
अस्मात्तन्मार्गत्वात् । यतः पुत्रोऽपि विप्रवत् तेनैवार्जितत्वेन परतन्मः स्वारजितधने
पितुरंश्चद्वयग्रहणावरोहो न भवतीत्यत्र तात्पर्यम् । यच्चाजनपदवैरूप्यं तदप्यसत् । पुत्रे-
ऽपि पित्रस्त्रेष्ठत्वात् । न च सर्वस्वदाननयविरोधः पित्राद्यस्तत्वे तस्य तात्पर्यत्वात् ।
पुत्राद्यदानस्य तन्मयसिद्धान्तस्य भाष्यप्रदर्शितचोदकविरोधयुक्तिसिद्धत्वात् । अतएव
पुत्रकान्यादानादिविधये मुख्याद्याएव न पुत्रादिपरतन्मीकरणरूपगौडदानाद्यर्थः ।

13. इदञ्च पितुरंश्चद्वयोपादानं स्वारजितविषयं न पित्रार्जितविषयम् । भूर्या
पितामहोपाप्तां निबन्धो द्रव्यमेव वा । तत्र स्यात् सट्शं स्वाभ्यं पितुः पुत्रस्य चोभये-
रिति याज्ञवल्क्येन तत्र पितापुत्रयोः समस्मान्माभिधानात् समांशभागित्वमेव ।

तस्य ह्ययमर्थः । भूः शालिन्धेनादिका । निबन्धो राज्ञाममुकस्यैकस्मिन् पर्या-
भरककमुकभरकादावियन्ति पर्यादीनि देयानीति शासनाच्छ्रुतया यद् दृष्टित्वेन
दीयते तदुच्यते । तथा द्रव्यं सुवर्णादि तत्र पितुः पुत्रस्य च स्वाभ्यं हि शब्देन प्रसिद्ध-
मित्युच्यते । जन्मनैव स्वत्वात् । तदपि सट्शं तुल्यमतोऽत्र पुत्राणां न पित्रार्जित इव
पित्रपरतन्मत्रमिति तदनिच्छयापि विभागोऽंश्चद्वयनियमश्च पितुर्नास्तीति ।

दृश्यति । द्रव्ये पितामहोपाप्ते स्थावरे जङ्गमे तथा । सममंशित्वमाख्यातं
पितुः पुत्रस्य चैव हि ॥ पित्रा समएवांशो याज्ञो न तु स्वारजितवदंश्चद्वयं विषम-
विभागपक्षान्तर्यं वेत्यर्थ इति मदनरत्नकारः ।

जीमूतवाहनस्तु यत्र द्वयोर्भाषोर्जीवत्येव पितर्येकः पुत्रमुत्पाद्य नष्टोऽन्यच्च
जीवति । पश्चात् पितापि मृतस्तत्र पित्रधनं प्रत्यासत्तेः पुत्रस्य सएव प्राप्नोतु न तु
प्राप्तुतपित्रकपौत्रकस्य विप्रकर्षात् तद्वाधार्थं सट्शं साम्यमिति वचनम् । यथा
पैतामहधने पितुः साम्यं तथा तत्पुत्रस्यापि । न तु सन्निकर्षविप्रकर्षयुक्तो विशेषः ।
पार्वणविधिना पित्रदातृत्वेन द्वयोरविशेषादित्यभिप्रायः । अतएव मृतपित्रकः प्रपौ-
त्राऽपि प्रपितामहधने पुत्रपौत्राभ्यां सह तुल्यवदेव स्वामी । पित्रदानाद्यविशेषात् ।
जीवति तु पितरि पुत्राणां तद्गन्तव्ये सपुत्रभाहृदयविभागे तत्पुत्राणामपि विभागः
स्यात् स्वामित्वसाम्यात् । तस्मान्मृतपित्रकपौत्रविषयकमिदं न पौत्रमात्रविषयकं न
चाप्रक्रान्तत्वात् तदर्थकत्वं प्राग्नेकपित्रकाणामेव प्रक्रमात् । साट्शवचनन्तु स्वारजित-
वत् पित्रिच्छया विभागभावाद्यर्थम् । यद्याह विष्णुः । पिता चेत् पुत्रान् विभजेत् तस्य
स्त्रेष्वा खयमुपाप्तेऽर्थः । पैतामहे तु पिता पुत्रयोस्तुल्यं स्वाभ्यमिति । अतः स्तोपाप्ते
पिता न्यूनाधिकभागैः पुत्रानिच्छया विभजेतु पैतामहे तु तुल्यस्त्रेष्ठदृष्टिता । एता-
वतैवैतद्वचनोपपत्तौ सामान्यप्राप्तं पित्रिच्छया विभागकालत्वं पितुश्च भागद्वयं न
निविध्यते । जीवत्पित्रकपौत्रविषयतापि वा धारेन्वरानुमतास्यास्तां तथापीच्छाकृत-
न्यूनाधिकभागनिरासार्थमेव । न तु पुत्रेच्छया विभागोऽंश्चद्वयभावश्च पितुरनेन
बोध्यते । किञ्च जन्मविद्यागुणव्येष्टो द्वांश्च दायदवाप्नुयात् । समांशभागिनस्त्वन्वे तेषां

पितृसमस्तु स इति दृष्टस्यतिवचनात् पितापि स्वपितृनरकनिवर्त्तको गुणव्येष्टः स्वभावाभिः सह विभागे पितृसमत्वेन यत्रांशद्वयभाक् तत्र पुत्रैः सह विभागे पितृवांशद्वयं पैतामहधनेनाप्नोति स्वदारकस्य पुत्राणां तद्धनसम्बन्धश्चेति भवतो मुनीनाञ्च वचनमनुचितम् । तस्मादिच्छया विभजेत्सुतानिति पित्रिच्छाया विभागकालत्वं द्वावंशौ प्रतिपद्येतेत्यादि वचनेनाहं पितुर्भागद्वयश्चाविशिष्टं पितामहधनेऽपि । न्यूनाधिकभागमात्रन्तु पुत्रेषु स्वाच्छन्देन न भवति । इत्ये पितामहोपात्ते स्थावरे जङ्गमे तथा । सममंशित्वमाख्यातमित्युक्तं पुत्रस्य चैवहीति दृष्टस्यतिना पितापुत्रयोरंशसाम्यस्यैवाहय विधानात् कथं पितुरत्राप्यंशद्वयमिति चेन्न । अंशित्वमंशकत्वं समं न तु खेच्छया स्वार्जितवन्न्यूनाधिकांशकत्वं तदर्थत् । न त्वंशवत्त्वं सममिति । स यद्येकपुत्रः स्यादित्येकपुत्रपदस्यौरसपरत्वस्योक्तत्वाद् द्विपितृकक्षेत्रजादिरूपपित्रिभिप्रायं वा समांशित्वाभिधानमित्याह ।

तदनादेयम् । सन्दर्भविरोधात् । तथा हि । अनेकपितृकाणां पितृदारकभागकल्पनामभिधायानन्तरं भूर्या पितामहोपात्तेयुक्तं तत्रास्मान्यमेव पौत्राणां पैतामहे धने पितरि जीवति विभागाभावो वा । तदिच्छयैव वा स्वार्जितवद्विभाग इति शङ्कात्रयमेवोत्तिष्ठति । यन्मिताक्षरायामुक्तं तन्मिराकरणार्थमेवेदं वचनं तद्वाख्यानरीत्या सङ्गच्छते । प्रमीतपितृकपौत्रविषयकत्वेन सङ्गोचोऽस्य कुतः । न च धारेश्वरावधारितरीत्या पौत्रमात्रविषयकतायामपि न्यूनाधिकभागमात्रस्य पित्रिच्छाकृतनिरासायेदं न पित्रिच्छाकालतदीयभागद्वयस्याविशेषप्रवृत्तस्येति वाच्यम् विनिगमनाविरहात् । किञ्च । पित्रिच्छाया हेतुत्वमिच्छया विभजेदिति तृतीयानिर्देशाच्छब्दमार्थिकन्तु तस्याविभागकालोपलक्ष्यत्वम् । तत्र शाब्दं हेतुत्वम्बाधमानेनानेनार्थिकं कालोपलक्ष्यत्वं न बाध्यत इति चित्रम् । सति च स्वाभ्यसान्ये पुत्रेच्छाया निमित्तत्वं तत्कृतञ्च तस्याः कालोपलक्ष्यत्वफलप्राप्तिकयापि तद्वारम् ।

ननु पितुरंशद्वयं पितृत्वप्रयुक्तं न स्वाभ्याधिक्यप्रयुक्तं नाप्यर्जकत्वप्रयुक्तं तस्य येन चैवां स्वयमुपार्जितं स्यात् स ह्यंशमेव लभेतेति वाश्लिषसाधारणवचनादेव सिद्धे द्वावंशौ प्रतिपद्येतेति विशेषवचनानर्थक्यप्रसङ्गात् । तस्मात् पित्रर्जितेऽपि व्येष्टपुत्रत्वप्रयुक्तं यथा तस्यांशद्वयं विशेषवचनात्तथा पैतामहे पितुरपि । अतएवास्मन्मते पुत्रार्जितेऽपि पितुरंशद्वयमिति चेत् । सत्यम् । परन्तु निःसङ्गोचप्रवृत्तस्वाभ्यसान्यवचनेन तद्वाध्यते । पुत्रार्जिते तु पितुरंशद्वयभावा भवदुदाहृतपुत्रवित्तार्जनादिति वचनस्य भवदुक्तार्थदूषणात् प्रागेव व्यवस्थापितः । न च तद्वचनादंशद्वयभावेऽपि सामान्यवचनादेव पुत्रार्जितेऽपि पितुरंशद्वयमायात्विति वाच्यम् । वित्तार्जनस्य तत्र हेतुत्वोपन्यासवैयर्थ्यप्रसङ्गात् । न च तदर्थवादमात्रमन्यार्जकत्वप्रयुक्तभागद्वयस्य वश्लिषवचनादेव सिद्धेर्विशेषवचनानर्थक्यपत्तिरिति वाच्यम् । यतस्तत्तार्जकत्वप्रयुक्तपुत्रांशद्वयस्यावारणात् पितृत्वप्रयुक्तपित्रंशद्वयेऽपि भागसाम्यस्य पर्यवसानम्भवेत् न तु भवदभिमतपुत्रापेक्षया पितुरंशाधिक्यं तथाह्य वचनाभावात् ।

यच्च किञ्चित्पादिनागौचित्यमुक्तं तन्न किञ्चित् । वाचनिकसाम्येऽगौचित्याप्रसङ्गे ।
ज्येष्ठस्य ज्येष्ठत्वप्रयुक्तमंशद्वयं पिढत्वप्रयुक्तञ्च पितुरिति ज्येष्ठपुत्रसाम्यापत्तेस्त्वयाप्यनौ-
चित्यस्य दुर्वारत्वात् ।

14. मदनरत्नदत्तकात्यायनवचनात् सर्वेषां भ्रातृणां पितापुत्राणाञ्च समाश्र-
यहृद्यमेव मुख्यमिति प्रतीयते । सकलं त्रयजातं यद्भागैर्गृह्णन्ति तत्समैः । पितरौ
आतरश्चैव विभागो धर्म्य उच्यते इति ॥ अतएव योगीश्वरेऽपि सर्वे वा स्युः समाश्रिन
इति सर्वपदं प्रायुक्तं अन्यथा समाश्रिनो वा कुर्वीत सुतानिति वदेत् ।

15. यस्तु विभागिनां मध्ये स्वव्यवसायेन जीवनसमर्थः पिढधनादिविभागं न
जिघृक्षति तस्याद्याह मनुः । भ्रातृणां यस्तु नेहेत धनं शक्तः स्वकर्मणा । स निर्वास्याः
स्वकादंशात् किञ्चिद्व्योपजीवनम् ॥ याचवक्ष्येऽपि । शक्तस्यानीहमानस्य किञ्चिद्व्य-
प्यक्त्रिया । निर्वासो निःसम्बन्धीकरणीयः । पृथक्क्रियेत्यस्याप्ययमेवार्थः । किञ्चि-
द्व्येति विभागचिह्नत्वेन किञ्चिदसारमपि दत्त्वेत्यर्थः । तत्पुत्राणां दायजिघृक्षानिदृश्य-
यश्चेदम् ।

हृत्पायुधस्तु । कुटुम्बार्थेषु चोद्युक्तस्तत्कार्यं कुरुते तु यः । स भ्रातृभिर्द्वन्द्वीयो
यासांश्चादनवाहनेरिति नारदवचनैकवाक्यतालाभेन मनुवचने स निर्वात्य इति
पाठं प्रकल्प्य स भ्रातृभिर्गृहीतभागैः स्वस्वभागाद्धनमाह्वयं पूरणीय इत्यर्थ इति
व्याख्यातवान् । तत्तु नेहेतेत्यादिपदवैयर्थ्यापत्तेरपेक्ष्यम् । मेधातिथिप्रमुखाचार्यानादृत-
तया पाठकल्पनानौचित्याच्च । पृथक्क्रियेति स्पष्टवचनसम्भादाच्च ।

प्रकाशकारस्तु । यो भागिषु धनार्थं व्यापृतेषु प्रमादानस्यादिना नेहेत न
व्याप्रियेत साहाय्यं न कुर्यात् । स्वकर्मणा स्वव्यापारेण शक्तः साहायकक्षमोऽपि सन्
स स्वकादंशात् स्वव्यापारजनिताद्धनाद् वह्निःकार्यः किञ्चिदुपजीवनं दत्त्वा मूलधन-
मात्रभागीकरणीय इतीदं मनुवचनं निर्वासेत्याकीरपाठमङ्गीकृत्यैव व्याचष्टे । तदपि न
युक्तम् । अपिशब्दाद्यध्याहारप्रसङ्गात् । योगीश्वरवचनसम्भादिनोऽर्थस्य स्पष्टतर-
प्रतीतिकत्वाच्च । भवदुक्तार्थस्य वचनान्तरवशत्वाच्च ।

16. कात्यायनः । अविभक्ते निजे प्रेते तत्सुतं रिक्थभागिनम् । कुर्वीत जीवनं
येन त्वत् नैव पितामहात् ॥ जभेतांश्च सपित्यन्तु पिढव्यादापि तत्सुतात् । सख-
शस्तु सर्वेषां भ्रातृणां न्यायतो भवेत् ॥ जभते तत्सुतो वापि निवृत्तिः परतो भवेत् ।
निजे आतरि तत्सुतं भ्रातृपुत्रम् । जीवनम्भागः । स कीदृशम्भागं जभत इत्यपेक्षिते
आह पित्यमंशमिति । तत्सुतो यस्य धनं विभज्यते तस्य प्रपौत्रः । पौत्रस्य प्रकृत-
त्वात् । परतस्तत्सुतामिवृत्तिर्भागनिवृत्तिर्भवेत् प्रपौत्रपुत्रो भागं न जभेतेत्यर्थः ।

अतएव देवलोऽपि । अविभक्तविभक्तानां कुल्यानां वसतां सप्त । भूयो दाय-
विभागः स्यादाचतुर्थ्यादिति स्थितिरिति ॥ वीजिचतुर्थमभिधाय दायभाग इत्यर्थः ।
विभक्तानामपि संसर्गादिना सङ्घवासे सतीयं व्यवस्था । वसतां सङ्गति वचनात् ।

पित्यमंशमिति कात्यायनोक्तेः पिढदारवो भाग इति सूचितम् । अतएवाह

याज्ञवल्क्यः । प्रमीतपिढकाद्यान्तु पिढतो भागकल्पनेति । पैतामहे धने जन्मना स्वत्व
पौत्राणां पुत्रैः सहाविष्टिष्टमेव यद्यपि तेन पुत्रवत् पौत्राणामपि पुत्रसमस्य भाग
उचितः । तथापि तेषां पिढदारेण भागं प्रकल्प्य स्वस्वपिढभागधिकारो न तु पैतामहे
धने स्वतो भागित्वमित्यर्थः । एतदुक्तं भवति अविभक्ता भ्रातरौ यदा पुत्रानुत्पाद्य
दिष्टकृतास्तत्रैकस्य द्वौ पुत्रावन्येषां त्रिचतुराद्या इति पौत्राणां वैषम्यं तदा द्वावेकं
स्वपिढभागं द्वेधा विभज्य ऋद्धीतस्त्रिचतुराद्या अपि स्वस्वपिढभागमेकैकं त्रैधादिरूपेण
विभज्य ऋद्धन्ति न तु पौत्रसङ्ख्याया पैतामहधनभागाः । अनयैव रीत्या केषुचिद्
भ्रातृषु जीवत्सु केषुचिच्च पुत्रानुत्पाद्य विनष्टेषु त्रिधमाणाः स्वस्वांशभागिनोऽन्येषां
पुत्राः स्वस्वपित्रंशभागिन इति वाचनिकोऽयं भेदः । अतएव वचनमिदमन्यवक्तानु-
वादकम् उद्धारादिविषयविभागोऽपि वाचनिकः । समांशत्वं तु स्वाभ्यात् प्राप्तमेवानूद्यते ।

17. यच्च पैतामहमपहारादिना नष्टं पित्रोर्द्वियते तत्र पित्रिच्छयैव पित्र-
जित्तव पौत्रा विभागभाज इत्याह मनुः । पैढकन्तु पिता त्र्यमनवाप्तं यदाप्नुयात् ।
न तत्पुत्रैर्भजेत्सार्द्धमकामः स्वयमर्जितम् । स्वयमर्जितमिवेतीवशब्दाध्याहारेण योज्यम् ।
यदा तत्पितामहादृतमनेनैवोद्धतमतः स्वार्जितमेव जातं यत इति हेतुतया योज्यम् ।
अकाम इति वचनात् पित्रिच्छयैव तादृशे पैतामहेऽपि विभागो न पुत्रेच्छयेति
गम्यते ।

तथा स्मृत्यन्तरमपि । पैतामहं हृतमपित्रा स्वशक्त्या यदुपार्जितम् । विद्या-
शौर्यादिना प्राप्तं तत्र स्वाम्यमित्युः स्मृतम् । प्रदानं स्वच्छा कुर्याद् भागश्चैव ततो
धनात् । तदभावे तु तनयाः समांशाः परिकीर्त्तिता इति ॥ हृतमपरैरपहृतं पिता-
महेन न प्रत्याहृतमपित्रा तु प्रत्याहृतमित्यर्थः । स्वशक्त्येत्युक्तेः पितामहद्रथानुपसंभवे-
त्यर्थः । तदुपसंभवे तूद्धृतेऽर्जकत्वनिमित्तमंशद्वयं येन चैषां स्वदमुपार्जितं स्यात् स
ह्यंशमेव लभेतेति वशिष्ठवचनात् पिता भजते । इदञ्च विद्यादिष्वपि योज्यं तच्च
विस्तरेण विवेक्ष्यते ।

अथमत्र निर्गमितोऽयं । यद्यपि जन्मनैव पैढके पैतामहे च धने पुत्रपौत्राणां
स्वाभ्यं तथापि पूर्वाक्तवचनैः पैढके पुत्राणां पिढपरतन्त्रतया पितृस्वार्जकतया प्राधान्यात्
पित्रा स्वार्जिते विनियुज्यमाने स्थावरं द्विपदश्चैवेत्यादिप्राक्प्रदर्शितवचनात् तद्वृत्ति-
रिक्ते पुत्रैरनुमतिरवश्यं कार्या । पैतामहे तु निषेधाधिकारोऽप्यस्ति । तदनुद्धृते
पित्रोद्धृते तु वदिच्छावशवर्त्तितैव पैतामहेऽपीति । मणिमुक्तादौ तु पैतामहेऽपि
पितुरेव स्वातन्त्र्यं मणिमुक्ताप्रवालानामित्यादिप्राग्लिखितवचनेभ्यः ।

18. अत्र पित्रुपरमानन्तरं यो भ्रातृणां विभागः स पित्रोरिति द्विवचना-
दुभयोपरमस्य पिढधनेऽपि न तु मातुःपरमो माढधनगोचर इति संयुक्तकाराद्युक्त-
मादत्तंथम् । पैढकमित्यत्र पित्रोरिदमित्येकशेषकल्पनायां प्रमाणाभावात् । जनन्यां
संस्थितायान्तु समं सर्वे सहोदरा इत्यादिना माढधनविभागस्याग्रे वक्ष्यमाणत्वाच्चात्र
माढधनविभागविधौ पौनरुक्त्यापत्तेः । याज्ञवल्क्येनापि मातुर्द्विहतर इत्यादिना

मातृधनविभागस्य विभजेरन् सुताः पित्रो रिव्यमिति सम्बन्धो नाभिमतः किन्तु पित्रोरुर्द्धमिथेव । पितुर्ऋक्वृष्यमिति तु सम्बन्धोऽर्थान्मातृऋक्वृष्यविभागस्योत्तरार्द्धेनेत्तोः । अतएव प्रागुक्तशृङ्खलिखितवचने रिव्यमूर्धं हि कुटुम्बमित्यादौ मातुरप्येवमवस्थिताया इत्यनेन मातुरपेक्षयाप्यस्मात्तन्त्रं विभागानधिकारः सोदराणां तस्यामपि जीवन्त्यामित्येतदर्थमेवोक्तम् । अतश्च । आदृणां जीवतोः पित्रोः सहवासो विधीयते । तदभावे विभक्तानां धर्मस्तेषां विवर्द्धत इति व्यासवचने सहवासविधानमुखेन पृथग्भावनिषेधात् पितृभ्रातृजीवनवतश्च विभागनिषेधाज्जीवतोरिति साहित्यमविवक्षितम् । अतएव एकस्मिन्नपि जीवति विभागो न धर्मः किन्तुभयोपरमे ।

पित्रोरभाव इत्यादिदृष्टस्यतिवचनेऽपि निवृत्तरजस्तायां मातरि जीवन्त्यां विभागस्य मातृधनगोचरत्वानुपपत्तेरभयभावोक्तविभागस्यैव जीवतोरपीत्यपिशब्देन निर्दिष्टस्य श्रुतत्वकोर्त्तनादुभयोरभावे भ्रातृविभागः पितृधनगोचरएवेत्यवधार्यते ।

अतएव व्यासो मातरि जीवन्त्यां यो विभागस्तस्य मातृप्रधानकत्वं दर्शयति । यथाह । समानजातिसङ्ख्याये जातास्वेकेन सूतवः । विभिन्नमातृकास्तेषां मातृभागः प्रशस्यते ॥ दृष्टस्यतिरपि । यद्येकजाता बहवः समाना जातिसङ्ख्याया । सापत्नास्तैर्विभक्तव्यं मातृभागेन धर्मत इति ॥ अत्र जातिसङ्ख्याया साम्ये सापत्नानामपि भागविशेषः स्वरूपकृतो नास्तीति मातृभागत्वविधानं मातृप्रधान्यपरमेवेति नायं पुत्राणां विभागः किन्तु तन्मातृणामित्युद्दिश्य विभागः कर्त्तव्य इत्यत्र तात्पर्यम् । तेनैतन्मातृधनइवात्रापि मातृजीवने पुत्राणां न परस्परं विभागो धर्मः । यतो गौतमादुक्ता विभागे धर्मवृद्धिरपि मात्रुपरमएव वेदितव्येति जीमूतवाङ्मन आह ।

तत्पितृधने मात्रभावापेक्षया अदृष्टार्थत्वापत्तेः प्रागेव निरस्तम् ।

यच्च पितृकामित्येकशेषस्याप्रमाणकत्वात् पौनरुक्त्यापत्तेश्च नास्य मातृधनपरत्वमित्युक्तं तदप्यदृष्टार्थतापरिभयादेकशेषस्य स्वीकर्त्तव्यत्वादयुक्तम् । पौनरुक्त्यन्वययुक्तम् । पूर्वोक्तस्यापि मातृधनविभागस्य विशेषविधानायानुवादोपपत्तेः ।

याज्ञवल्क्यवाक्ये तु मिताक्षराकृता च मातापित्रोर्द्धनं सुता विभजेरन्नित्युक्तम् । तत्र मातृधनेऽपवादमाहेत्युत्तरार्द्धमवतारयता पौनरुक्त्यम्परिहृतम् । ताभ्य ऋतेऽन्वय इति च दुहितृभावेऽन्वयः पुत्रादिर्मातृधनमृणावशिष्टं गृह्णीयादिति व्याख्याय इदञ्च । विभजेरन् सुताः पित्रोरुर्द्धमृक्वृष्यं सममिति । अनेनैव सिद्धमपि स्पष्टार्थमुक्तमित्युक्तम् ।

न चात्र पित्रोरुर्द्धमिथेवास्तु सम्बन्धः मातृधनविभागस्योत्तरार्द्धेऽभिधानात् पितुर्ऋक्वृष्यमिति पर्यवस्यति । तथा च ताभ्य इत्यादेर्निरर्थकानुवादत्वमपि न प्रसम्भवतीति वाच्यम् । ऋक्वृष्यपदयोः ससम्बन्धिकार्थत्वात्तदाकाङ्क्षायां स्ववाक्योपात्तपित्रोरिति पदानुवृत्त्यैव परिशेषावगतार्थकपितुःपदान्वयापेक्षयाभर्हितत्वात् । तदंशेन तु ताभ्य इत्यस्यानुवादत्वस्याप्यभ्युपगमौचित्यात् । ये त्वन्वयपदं दुहितृत्वयदौहित्वादिपरत्वेन व्याचक्षते तन्मते तु वैयर्थ्यशङ्कैव नास्ति । तदेतद्विसरेण

स्त्रीधनविभागप्रस्तावे प्रपञ्चयिष्यामः । शङ्खलिखितोक्तं मातरि जीवन्धामखातन्वायन्तु मानवर्द्धनं तद्धनगोचरमपि सङ्गच्छतएव ।

भाट्टाणामित्यादिव्यासवचनमपि सहवासप्राशस्त्यमात्रमुभयजीवन आहेति जीवतेरिति साहित्यविवक्षायां न दोषः । वन्तस्तु पित्रोरुर्द्धमपि ज्येष्ठएव तु गृह्णीयादिति सहवासस्य मुख्यत्वादिभागस्य च धर्मदृष्टार्थत्वात्मातरि जीवन्धामपि धर्मस्य पञ्चमहायज्ञादेरावश्यकत्वात्तदुद्दृष्ट्यं विभाग उचितएव ।

यत्तु पित्रोरभाव इति दृष्टस्यतिवचने निवृत्तरजस्कायां मातरि जीवन्धामित्याद्युक्तं तत्रोच्यते । उभयजीवने सहवासः प्रशस्तस्तदभावे विभाग इति पूर्वोर्द्धनाभिहिते । मातर्यनिवृत्तरजस्कायां सन्तानसम्भवात् तदुद्दृष्टिलोपस्य च ये जाता येऽप्यजातास्तेत्यादिवचनेन गर्हितत्वान्निवृत्तरजस्कायान्तु तस्यां तदप्रसक्तेरुपरतस्यृहे पितरीव विभागः प्रशस्त इति तस्यार्थः । तथा सति निवृत्तरजस्कायां तस्यां तदीय-
ऋक्थाधिकारिकन्यासन्तानस्यासम्भवात्सुतरान्तदिच्छया तद्धनविभागोऽपि पुत्राणामुचित इति माट्टधनगोचरताप्यस्य वचसः सम्भवतीति न किञ्चिदेतत् ।

यदपि व्यासदृष्टस्यतिवचसो माट्टप्राधान्यं सापत्नविभागस्योक्तन्तन्ममाप्यविरुद्धम् । यथा हि । जीवतेरस्ततन्त्रः स्याद्वार्यामिसमन्वितः । इत्यादि वचनवशाद्विभागोत्तरपिठमाट्टपारतन्त्रं तथैतद्वचनवशात्माट्टभागएवायमिति बुद्ध्या तदाज्ञावशम्ब-
दतया तज्जीवनावधि स्थेयमित्येतवता पिठधनविभागोऽपि तस्याज्जीवन्धामनधिकारः कुतश्च इत्यलमधिकेन ।

19. जीवत्पिठकविभागे पित्रा यथा स्वपुत्रांशसमांशभागिन्यः स्वपत्न्यः कार्यो-
त्तथा तदुपरमविभागेऽपि पुत्रैस्ताः स्वसमांशभागिन्यः कार्यो इत्याह याज्ञवल्क्यः ।
पितुरुर्द्धं विभजतां माताप्यंशं समं हरेत् । यदि स्त्रीधनन्दत्तन्न भवति । दत्ते त्वंशार्द्ध-
हारिणी कार्येति वचनादप्यत्रार्द्धशब्दो न समविभागवचनः । किन्तु यावता पुत्रस-
मांशिता भवति तावदेव विवक्षितम् ।

अत्र माट्टपदस्य जननीवाचकत्वान्नापुत्रसपत्नमाट्टपरत्वमपि । सङ्गच्छतस्य माट्ट-
पदस्य मुख्यगौणोभयार्थत्वानुपपत्तेः ।

यत्तु । असुतान्तु पितुः पत्न्यः समानांशाः प्रकल्पिताः । पितामहश्च सर्वास्ता
माट्टतुल्याः प्रकीर्तिता इति व्यासवचनात् योगीश्वरवचने पत्नीग्रहणाच्च जीवत्पिठकवि-
भागे पत्नीमात्रस्य पुत्रसमांशत्वम् । पुत्रपत्नीपदयोः पिठप्रतियोगिकासम्बन्धार्थकतया
गौणमुख्यार्थकत्वानुपपत्तेः । पित्रोरुर्द्धं विभागे तु पुत्रकर्तृकतया तत्सम्बन्धमाट्टप्रतीते-
र्वैरूप्यादुभयपरत्वासम्भवात् पुत्रवतीनामेव स्वपुत्रसमांशित्वं अपुत्राणान्तु ग्रासाच्छाद-
नमात्रमात्रमविभक्तसंख्यपत्नीनामिव । युक्तश्चैतज्जीवद्विभागे पितुः खातन्त्रात्
अजीवद्विभागे पुत्राणां खातन्त्रात् माट्टपदपत्नीपदस्वरसाच्च । युक्तश्चापुत्राणां ग्रासा-
च्छादनमात्रमाजनत्वमिति बह्वतरनिबन्धस्वरसः ।

मिताक्षराकृतस्तु जीवद्विभागे पुत्रसमांशित्वं पत्नीनामुक्तमिदानीं पितुरुर्द्धं

विभजतामपि पुत्रसमभागित्वं पत्नीनामाहेत्यवतारणिकं पितुर्द्वयं विभजतामित्यस्य योगीश्वरवचसः प्रयच्छतोऽत्रापि समुत्रापुत्रसकलपितृपत्नीनां पुत्रसमांशित्वमभिप्रेतमिति प्रतीयते ।

मदनरत्नकृताप्यत एवेतत्तम् । जननीयद्वयमपुत्राणामपि मातृसपत्नीनामुप-
कक्ष्यं पितामहीनाञ्च । असुताश्च पितुः पत्न्य इत्यादिध्यासवचनादिति ।

युक्तश्चेतत्पितुः पत्न्य इति पुत्रप्रतियोगिकपितृग्रहणस्यान्यथा वैयर्थ्यात् । पुत्र-
समांशित्वस्य पितृकृतविभागविषये पत्न्यः कार्यः समांशिका इति वदन्नपि मातर
इत्येव वदेत् । तस्मात्पितृपत्नीत्वप्रयुक्तमेव जीवद्विभागसाधारणं पुत्रसमांशभाक्कमिति
मिताक्षरामदनरत्नकारकृतोत्तरमिप्रायः ।

पितुरिति कर्त्तरि षष्ठी । तेन पितृकर्त्तृके विभागे पत्न्यः समानांशा इत्युक्ते-
ऽर्थात्तत्प्रतियोगिकस्यैव पत्नीत्वस्य लाभान्जीवद्विभागविषयतैवास्तेष्वचिता । तत्र मातृ-
पदे मुख्यामुख्यमातृपरत्वानौचित्यात्प्रतिसम्बन्धितया च पुत्राणामेव स्ववचनोपात्ता-
नामुपस्थितेर्जननीपरत्वमेव मातृपदस्य मुख्यार्थलाभायोचितम् । शिष्टाचारोऽप्येवम् ।
तदत्र युक्तान्तद्वयाच्चमित्यलमधिकेन ।

दृश्यति । तदभावे तु जननी तनया वा समांशिनी । अत्र प्रक्रमत्तच्छब्देन
पिता गृह्यते ।

20. पितरि प्रेते यदि कोऽपि भ्रातरोऽसंस्कृताः सन्ति तदा तत्संस्कारं समु-
दायद्रव्येण विधायवशिष्टं यथांशेन विभजनीयमित्याह याज्ञवल्क्यः । असंस्कृतास्तु
संस्कार्या भ्रातृभिः पूर्वसंस्कृतैः । भ्रातृभिरित्यभिधानादसंस्कृता भ्रातर इति प्रतीयते ॥

संस्कार्यत्वमात्रविधानस्य दायभागप्रस्तावासम्बन्धात्समुदायद्रव्यादिति विवक्षित-
तम् । तथाच व्यासः । असंस्कृतास्तु ये तत्र पैतृकादेव तद्वनात् । संस्कार्या भ्रातृभि-
र्ज्यैः कन्यकाश्च यथाविधि ॥

अविद्यमाने पितृधनेऽसंस्कृतसंस्कारावश्यकतामाह नारदः । अविद्यमाने पित्रर्थे
स्वांशादुद्धृत्य वा पुनः । अवश्यकार्याः संस्कारा भ्रातृभिः पूर्वसंस्कृतैः ॥

21. असंस्कृतभगिनीसंस्कारोऽप्यावश्यकः । सति पितृद्रव्ये ताभ्योऽंशदानमपी-
त्याह याज्ञवल्क्यः । भगिन्यश्च निजादंशादत्वांशन्तु तुरीयकमिति । असंस्कृताः
संस्कार्या इत्यनुषङ्गः । मनुः । स्वेभ्योऽंशेभ्यस्तु कन्याभ्यः प्रदद्युर्भातरः पृथक् । स्वांस्वा-
दंशाच्चतुर्भागं पतिताः स्युरदित्यवः ॥

अत्रोभयत्र प्रत्येकपरिकल्पितान्निजादंशादुद्धृत्य सर्वेभ्रातृभिर्भगिनीभ्यः प्रत्येकं
चतुर्थोऽंशो देय इत्यर्थो न भवति । तथा सति बह्वभ्रातृकाया बह्वधनत्वं बह्वभगिनी-
कस्य भ्रातृभिर्जित्तपत्तेः । तस्मात्संस्कारोपयुक्तद्रव्यदानमात्रं विवक्षितमिति रत्नाकर-
चिन्तामण्यादौ व्याख्यातम् । अनूदानान्तु कन्यानाम्भितानुरूपेण संस्कारं कुर्यादिति
विष्णुवचनञ्च तत्रोपादानकमुपन्यस्तम् ।

तदयुक्तम् अंशदानाविवक्षायाः स्मृतिद्वयेऽप्यन्याय्यत्वात् । संस्काराकरवप्रत्यवा-

यात् पृथगदानप्रत्यवायव्यवशाच्च अन्यथा पतिताः स्युरदित्त्व इत्यदानप्रत्यवायवचनम-
प्यसंस्कारप्रत्यवायपरं स्यात् ।

अतो मेधातिथिमिताक्षराकारादिभि र्थास्थातमेवम् । निजादंशात् स्वात् खादं-
शादिति नापादाने पक्षमपि तु ल्यङोपे । तथा च तमपेक्ष्येति यावत् । एवञ्च यज्जा-
तीया कन्या तज्जातीयपुत्रभागचतुर्थ्यांशभागिनी सा कार्य्या । तथा चायमर्थो ब्राह्मण-
जातीया या कन्या वक्ष्यमाणो ब्राह्मणपुत्रभागो यावांस्तचतुर्थ्यांशस्तस्याः । एवं क्षत्रि-
यादिजातीयकन्यापि । तच्च यथा । यदि कस्यचिद्ब्राह्मण्येवैका पत्नी तस्यास्त्रैकः पुत्रः
कन्यकाचैका । तत्र पितृव्यं सर्वमेव द्विधा विभज्य तत्रैकम्भागश्चतुर्धा कृत्वैको भागो
भगिन्यै तेन देयोऽवशिष्टं स स्वयङ्गृहीयात् । एवं पुत्रद्वये कन्यैक्ये च धेया विभागं
सर्वत्रयस्य विधायैकस्य चतुर्धाकृतस्य भागस्य चतुर्थभागम्भगिन्यै दत्त्वा शेषं
द्वाभ्यां यथांशविभज्य ग्राह्यम् । पुत्रैक्ये कन्याद्वित्वे चैधाकृतस्य त्रयस्यैकम्भागश्चतुर्धा
कृत्वा द्वावंशौ द्वाभ्यां कन्याभ्यां दत्त्वाऽवशिष्टन्तेन ग्राह्यम् । एवं समानजातीयेषु
असान्येऽपि सर्वथा भगिनीनां भाटजात्युचितभागतुरीयांशभागिता यथा भवति तथो-
क्तम् । यदा तु ब्राह्मणीपुत्र एकः क्षत्रियकन्या चैका । तत्र पितृधनं सप्तधा विभज्य
क्षत्रियापुत्रभागांस्त्रौचतुर्धा विभज्य तुरीयमंशं क्षत्रियाकन्यायै दत्त्वा शेषं ब्राह्मणी-
पुत्रो गृहीयात् । यदा तु द्वौ ब्राह्मणपुत्रौ क्षत्रियाकन्या चैका तदा पितृधनमेकाद-
शधा कृत्वा क्षत्रियापुत्रभागांस्त्रौचतुर्धा विभज्यैकमंशं क्षत्रियाकन्यायै दत्त्वा ब्राह्मणी-
पुत्रावन्त्यत् सर्वं विभज्य गृहीयाताम् । एवं सर्वत्र जातिवैषम्ये भाटभगिनीसंस्था-
सान्यवैषम्यं योज्यम् ।

विष्णुरपि । मातरः पुत्रभागानुसारभागहारिण्योऽनूढाश्च दुहितरः पुत्रभागानु-
सारेण यथा वर्णक्रमेण पुत्राणाञ्चतुस्त्रिंशेकभागभागिता तथा तत्तज्जातीयपत्नीनामपि ।
अनूढाश्च दुहितरः पुत्रभागानुसारभागहारिण्य इत्यनेन यद्यपि चतुराद्यंशानां सर्वेषां
दुहितृभ्योदानं प्रतीयते तथापि स्त्रेभ्योऽंशेभ्यः स्वात् खादंशादिति मनुयोगीश्वराभ्याश्चतु-
र्थांशदानस्योक्तेस्तथैव पुत्रभागानुसारो न सजातीयभ्रातृसमभागहारित्वमित्यविरोधः ।

स्पष्टमाह वृहस्पतिः । समांशा मातरस्त्रेधाश्चतुर्थांशाश्च कन्यका इति ॥ कन्य-
कानां नवदत्तानाश्चतुर्थो भाग इत्यते । पुत्राणाञ्च त्रयोभागाः सान्धं त्वत्पुत्रेण कृत-
मिति ॥ वदतः कात्यायनस्याप्येतदेवाभिमतम् । सान्धमित्यादेस्त्वयमर्थः । यदि संस्का-
रपर्याप्तमपि पितृधनं नास्ति तदा पुत्रसमभागितैव दुहितृभ्यामिति ।

अनूढानां त्वित्यादिविष्णुवचनमपि मेधातिथ्यादीनां न प्रतिज्जकम् । विष्णुनुसारेण
संस्कारमनूढानाम्भितुः कन्यानां सभगिनीनां कुर्यादित्यनेन संस्कारावश्यकतामात्रम-
त्रोच्यते न तु भागदानादाने ।

कृतिचन्द्रिकाकारसु । कन्याभ्यश्च पितृव्यग्रहेयं वैवाहिकं वक्षिति देवकवचना-
नुसारेण संस्कारमात्रोपयोगिप्रत्यदानमेव मन्यते । वैवाहिकं वक्ष्येति देवार्हिक-
विशेषवक्ष्याम्यथा वैवर्थापत्तेरिति तदाशयः ।

अत्र वदामः । कन्याभ्यः पितृद्रव्यन्देयमिति पृथग्विधिः । तच्च मन्वाद्यनुरोधाच्च-
तुर्यांशरूपमेव । वैवाहिकं वसु च देयमित्यपि पृथगेव विधिः । विभज्यमाने दायाद्ये
कन्याऽलङ्कारं वैवाहिकं स्त्रीधनं लभेतेति शङ्खवचनसमानार्थतया । व्याख्यातश्चेदं शङ्ख-
वचनं विद्यारण्यश्चोचरत्तेः पराशरस्मृतिटीकायाम् । पैतृकद्रव्यविभागकाले स्वधृतालङ्का-
रादिकमपि कन्या प्राप्नोतीत्याह शङ्ख इति । यदि तु वैवाहिकं विवाहोपयोगि पित्र-
द्रव्यं कन्याभ्यो देयमित्यर्थः स्यादसुपदम्पुनरुक्तं स्यादिति पृथग्विधिद्वयमेवात्र युक्तम् ।

दायतत्त्वज्ञता तु कन्याभ्यश्च पित्रद्रव्याद्देयवैवाहिकं बल्विति पठितन्त्रापि शङ्खेन
समानार्थकतालाभायास्तदुक्तमेव व्याख्यानमादर्शमर्हं न तु विवाहोपयुक्तद्रव्यपरतत्त्व-
वसेयम् ।

अत्र च मन्वादिवचनेषु भगिनीपदं क्वचित् क्वचिच्च कन्यादिपदं यद्यपि श्रूयते
तथापि आढकर्तृकविभागाधिकारात् पित्रप्रतियोगिकं कन्यात्वन्दुहित्वं आढप्रतियो-
गिकं भगिनीत्वमादायैकार्थकतावसेया ।

तस्मादजीवत्पितृकविभागे भगिनीनामपि पित्रद्रव्यांशभागित्वं तु संस्कारार्थता-
मात्रम् । पूर्वोक्तं यत्किञ्चित्पिता ददाति तदेव लभते विशेषवचनाभावादिति ।

जीमूतवाहनेन तूक्तम् । प्रदद्यर्भतरः दत्त्वांशन्विति मनुयोगीश्वराभ्यामभिधा-
नान्न भगिनीभिरधिकारबुद्ध्या चतुर्थ्यांशो ग्राह्यः । न ह्यधिकारिण एकस्मै आत्रेऽन्यो
भाता स्वांशादद्यादित्युच्यते । तथा चतुर्थ्यांशदानमपीति । तददाने आढ्यामेव दोषो न
तु तासां सङ्घकारितेति ।

तदप्युक्तम् । उक्तिवैचित्र्यमात्रस्यास्याप्रयोजकत्वात् । इच्छया विभजेत्तान्
उद्धारं व्यायसे दत्त्वेत्यादिवत् ।

यदपि तेनैवोक्तम् । येषान् न कृताः पित्रा संस्कारविधयः क्रमात् । कर्त्तव्या
आढभिक्षेणां पैतृकादेव तद्वनादिति ॥ नारदवाक्ये येषामिति पुंलिङ्गनिर्देशात्तदनन्तर-
मेव चाविद्यमान इति वचनारम्भाद्आढसंस्कारार्थमेवेदं वचनमिति सति पितृद्रव्ये
मन्वादिवचनेभ्यो भगिनीसंस्कारावश्यकत्वप्रतीतेः संस्कारोपयोगिद्रव्यदानमेव विवक्षित-
मिति ।

तद्वेयम् । वचनान्तरेषु भगिनीसंस्कारस्यावश्यकत्वप्रतीतेः । पिता पितामहो
भाता सकुल्यो जननी तथा । कन्याप्रदः पूर्वनाशे प्रकृतिस्थः परः परः । अप्रयच्छन्
समाप्नोति भूषहत्यामृतादृताविति ॥ आतुरपि योगीश्वरेण भगिनीविवाहसंस्कारा-
करणे भूषहत्यादोषश्रूतेस्तदेकमूलकतया येषान्तोषामित्यस्य सामान्यलिङ्गपुंसकमिति
वचनात्सासान्विविधान्यायाच्च नपुंसकवचनत्वं विरूपैकशेषोऽपि बाभ्रुपगन्तुमुचित-
एवेति ।

यवीयस इति गुम्दीर्घयोरभावश्चान्दसमभिप्रेत्य । असंस्कृता आतरन्तु ये स्युस्तच्च
यवीयसः । संस्कार्याः पूर्वजैस्ते वै पैतृकान्मध्यकाङ्क्षनादिति । दृष्टस्यतिवचनं पठित्वा
आतुरप्यहं भगिनीनामप्युपलक्ष्यमिति मदनरत्नकृता व्याख्यातम् ।

अत्र च संस्कारसाहचर्यादनूष्ठानां दुहितृश्याम् । कन्यकानान्वदत्तानामित्यनूढ-
त्वविशेषोपादानाच्चापरिणीताय चतुर्थांशभागिन्योभगिन्योऽन्यास्तु यत्कश्चिदौचित्य-
त्याक्षभन्त इति बोध्यम् । मातृधने चेदभ्यपञ्चनीयम् ।

22. स्थावरस्य स्थाजितस्य पैतामहस्य वा पुत्रानुमत्यैव पिता दानादि
कुर्यात् । स्थावरं द्विपदस्यैवेति प्रागुदाहृतवचनात् । यद्यपि स्वयमर्जितमित्यनेन पैता-
महे कैमुतिकन्यायेन पुत्रानुमत्यावश्यकता प्रदर्शिता । कुटुम्बस्यापिन्यामापदि तु यः
कश्चिदन्याननुमतावपि कुटुम्भरक्षस्यावश्यकत्वात् स्थावरदानविक्रयादावधिकारी ।
एकोऽपि स्थावरे कुर्यादानाधमनविक्रयम् । आपत्काले कुटुम्भार्थं धर्मार्थं च विशेषतः
इति वचनात् । धर्मार्थं इत्यनेनावश्यकः पित्राज्जादिरूपेधर्मो गृह्यते ।

यत्तु स्मरणम् । विभक्ता अविभक्ता वा सपिण्याः स्थावरे समाः । एको ह्यनीशः
सर्वत्र दानाधमनविक्रय इति ॥ तत्राविभक्तानां मध्यकत्रये खान्यसाम्यादनीशत्वमन्या-
नुमतिं विना सिद्धमपि स्थावरे विशेषतस्तदादरात्मुच्यते । विभक्तानान्तु व्यवहारसौ-
कर्यार्थम् । कालान्तरे हि विभक्ताविभक्तसंशये विभागभावनावश्यं साध्यादिप्रमाणेन
तथा सति कार्या सादन्यथा साधारणव्यवधानाद्यसम्भवात् । अनुमतौ तु सत्यां
तदनपेक्षयैव व्यवहारः सिद्ध्यति । ननु यथाश्रुतं स्थावरे विभक्तानामपि समं खान्यम् ।
विभागस्यादृष्टार्थताप्रसङ्गात् । अतश्चान्याननुमतिमन्तरेणापि दानादिसत्त्वं सिद्ध्यत्येव
विभागभावनायां व्यवहारोऽपि । यथा ख्यामञ्जातिसामन्तदायादानुमतेन वा ।
हिरण्योदकदानेन षड्भिर्गच्छति नेदिनीति वचने ग्रामानुमतिः सामन्तानुमतिश्च ।
सामन्तानुमतिस्तु सीमाविप्रतिपत्तिनिरासायापि । ज्ञातिदायादानुमतेस्तु पूर्ववदेव
व्यवस्था । अतएव स्मृत्यन्तरम् । प्रतियहः प्रकाशः स्यात् स्थावरस्य विशेषत इति ॥
अन्यथात्रापि ग्रामसामन्तानुमतिमन्तरेण दानाद्यसिद्धिः प्रसज्येत । हिरण्योदकदा-
नेनेति स्थावरे विक्रयो नास्ति कुर्यादाधिमनुष्येति स्थावरस्य विक्रयप्रतिषेधान्तु ।
भूमिं यत्प्रतिगृह्णाति भूमिं यच्च प्रयच्छति । तावुभौ पुण्यकर्माखौ नियतं स्वर्गगामि-
नाविति । दानप्रश्नसनाच्च कुटुम्भरक्षार्थमवश्यककर्त्तव्येऽपि विक्रये सहिरण्यमुदकं
क्रौञ्चे दत्त्वा दानांशोऽपि कश्चिद्यथा तत्र भवति तथा दानरूपेण स्थावरविक्रयं कुर्या-
दिति सूचितम् ।

जीमूतवाहनस्तु । स्थावरस्य समस्तस्य गोत्रसाधारणस्य च । नैकः कुर्यात्क्रय-
न्दानं परस्परमतं विना ॥ विभक्ता वाऽविभक्ता वेत्यादि व्यासीयवचनद्वयमुपन्यस्य
नेदमेकस्य क्रयदानाद्यनधिकारप्रतिपादनार्थम् । यथेष्टविनियोगार्हत्वलक्षणस्य स्वत्वस्य
अन्यान्तरश्च स्थावरेऽप्यविशेषात् स्वत्वत्यागाद्यनिष्पत्तेर्वचनश्रुतेनापि वस्तुनोऽन्यथाकर-
णाश्रित्वाधायितुमशक्यत्वात् । किन्तु दुर्हृतपुरुषमिति कुटुम्भार्थादिनिमित्ताभावे
कुटुम्भविरोधादधर्मभागिताच्चापगणार्थं निषेधरूपम् । अतएव नारदः । यथेकजाता
वहवः पृथग्धर्माः पृथक्क्रियाः । पृथक्कर्मगुणोपेता नष्टेत्यर्थेषु संयुताः ॥ स्वभागान्
यदि दद्युस्ते विभीबीयुरप्यपि वा । कुर्यैर्यथेष्टं तत्सर्वमीशास्ते स्वधनस्य हीति ॥

सामान्यत एव विज्ञायाद्यनुमन्यते । ईशास्ते स्वधनस्य हीति हेत्वभिधानात् स्यावरयोच-
रमयीदं वचनम् । अपरथा तदानर्थक्यापत्तेरित्याह ।

तत्त्वभ्यगेव परं त्वधर्मभागिताच्चापनार्थमित्युक्तम् । यथा स्यावरविक्रयस्य बह्वन्
प्रत्यपि निवेधादेकग्रहणापार्थक्यापत्तेः । व्यवहारशास्त्रस्य व्यवहारसौकर्यादिदृष्ट-
प्रयोजनसम्भवेऽदृष्टकल्पनानुपपत्तेः । अन्यथाऽनुमतावपि तदापत्तेः कुटुम्बविरोधजन्य-
वचनान्तरप्रतिपादिताधर्मप्रयोजकतापरमस्तु ।

23. अत्र च पुत्रेभ्यो यो जीवद्भिभागो यश्चाजीवद्भिभागः स एकैभ्योऽपि
भवत्वविशेषात् । अतएव विभागं प्रक्रम्य यत्कात्यायनेनेोक्तम् । अप्राप्तव्यवहाराणां
धनं व्ययविवर्जितम् । न्यसेयुर्बन्धुमित्रेषु प्रेषितानां तथैव चेति ॥ तदपि सम्मतम् ।
अन्यथा तदनुमतिसन्तरेण विभागाभावे तद्वनस्य बन्धुमित्रेषु न्यासविधानमनुपपन्नं
स्यात् । तथा विष्णुरपि । तथा रघ्वं बाणधनमाव्यवहारप्राप्तेरिति ।

23a. अथ च पुत्राणां विभागः पुत्रपौत्रप्रपौत्रपर्यन्तः समोनात्रोत्पत्तितः
प्रत्यासत्तिक्रमेणाधिकारक्रमः । पुत्रादीनान्वयाद्यमेव पार्वत्ये पिण्डदानाधिकारात् ।
अतएव देवतः । पिता पितामहश्चैव तथैव प्रपितामहः । उपासते सुतं जातं शकुन्ता
इव पिप्लवम् । मधुमांसैश्च शाकैश्च पयसा पायसेन च । एव नोदास्यति आर्जं वर्षासु
च मघासु चेति ॥ तथा च श्लोकाः शङ्खनिखितगौतमानां । पिता पितामहश्चैव तथैव
प्रपितामहः । जातम्युत्रं प्रशंसन्ति पिप्लवं शकुनाइव ॥ मधुमांसेन खड्गेन पयसा पाय-
सेन वा । एव दास्यति नक्षुप्तिं वर्षासु च मघासु चेति ॥ एवं तुल्यधिकारात् जन्मना
स्वत्वस्यापि तुल्यत्वात्तुल्यभागभागिता प्रसक्ताप्यनेकपिटकाद्यानिवर्ति वचनेन निवर्तते ।

जीवत्पिटकयोः पौत्रप्रपौत्रयोः पार्वत्यानधिकारेण पिण्डदातृत्वाभावात्पितामह-
प्रपितामहधने नाधिकारः । यदा चैकस्य पुत्राः सन्त्येकश्च पुत्र एवास्ति । तदा पुत्रस्यै-
कोभागोऽप्ररश्चैकः सर्वेषां पौत्राणाम् । स्वपित्रधीनजन्ममूलकत्वात् पितामहधनसम्ब-
न्धस्य यावद्येव धने तस्य स्वामित्वार्हत्वन्तावत्येव तेषामपीति जीमूतवाङ्मनेनेोक्तम्

अनादेयम् । जन्मना पौत्राणामपि पितामहधने स्वत्वव्यवस्थापनात् । तस्मात्
पौत्राणां पितामहधने वाचनिकमेव भागवैभवं न त्वौपपत्तिकम् ।

यस्तु तेनैवेोक्तम् । यत्रैकस्य आतुरनेकसङ्ख्याः पुत्रा अन्यस्य च ततोऽल्पसङ्ख्या-
स्तत्रेदमेनेकपिटकाद्यामिति वचनं पौत्रत्वेन सर्वेषां समभागनिवृत्त्यर्थमिवीति तु पितरि
पौत्राणाम्पितामहधनस्वाभ्ये सपुत्रापुत्रभ्रातृद्वयविभागे तत्पुत्राणामपि विभागः स्यात्
स्वाभ्याविशेषादिति ।

तत्प्रागेव निरुक्तम् । उक्तोऽतिप्रसङ्गोऽप्यनेनैव पराक्तः । अतएव पिटक्यभ्रातृ-
पुत्रसमवाये पिटक्यपिटकधनन्तदिति भ्रातृपुत्राणामत्र स्वाभ्याभावादिभागएव न स्या-
दित्यप्यपास्तम् ।

यच्च जीवत्पिटकयोरित्यादि तदपि मन्दम् । न हि पिण्डदानाधिकारएव दाव-
गृह्ये प्रयोजकः व्येके सति कनीयसामनधिकारेऽपि दावग्रहणात् । तदर्थतावाच्चा-

त्राप्यनपायात् । गोत्रजादीनां दायद्वराणामनेकेषां समवाये पिण्डदानाद्युपकारित्वं धनस्वामिनो यत्तदनुपकारित्वावर्तकम्परब्रतु तदत्र प्रयोजकम् ।

24. जीवद्भिभागेऽजीवद्भिभागे वा कस्याश्चित्पितृपत्न्यां भ्रातृपत्न्यां वा स्पृष्ट-
गर्भायामाप्रसवम्यतीक्ष्य विभागः कार्यः । अथ भ्रातृपत्न्यादयविभागो याश्चानपत्याः
स्त्रियस्तासामापुत्रणाभादिति वशिष्ठस्मरणात् । आपुत्रणाभादिति वचनात् स्पृष्टगर्भासु
प्रतीक्षाऽस्पृष्टगर्भासु तु नेत्यवगम्यते ।

अतएव तत्र पश्चादुत्पन्नस्य विभागप्रकारमाह योगीश्वरः । विभक्तौषु सुतोजातः
सर्वर्णायां विभागभाक् । पित्रिच्छया पुत्रेच्छया वा जीवतोः पित्रोर्विभक्तौषु पश्चात्सर्व-
र्णायां भार्यायामुत्पन्नो विभागभाक् । विभज्यत इति विभागः पित्रोर्भागस्तन्मजत
इति विभागभाग्भवति । पित्रोर्लङ्घं स एव तथोरंशं लभत इत्यर्थः । अस्तथां दुहि-
तरि मातृभागमिति विशेषः । सर्वर्णायामिति विशेषेणादसर्वर्णायां जातस्तु पित्याङ्ग-
नात्वांशमेव लभते दुहितृभावे मातृभागं सर्वमेव । अनेनैव न्यायेन जीवद्भिभागे-
ऽपि विभक्त्योऽसर्वर्णापुत्रः स्वजात्युचितभागेव । न सकलपितृभगित्वमवसेयम् ।

एतदेवाभिप्रेत्य मनुः । ऊर्ध्वं विभागाज्जातस्तु पितृमेव हरेद्वनमिति । पित्रो-
रिदमित्यन्धनं यथोक्तव्यवस्थया हरेत् । एवकारेण भ्रातृभिः स्वांशादास्तस्य स्वभागसम-
भागभाक् स न कार्यः । गौतमोऽपि । विभक्तजः पितृमेवेति ।

जीवति तु पितरि मातरि तत्पत्न्याच्चाऽविस्पृष्टगर्भायां विभक्तौर्विभागानन्तरो-
त्पन्नोऽयं स्वभागादास्तस्य स्वभागसमभागभाक् स कार्यः । तथा च विष्णुः । पितृविभक्ता
विभागानन्तरोत्पन्नाय विभागन्द्युरिति । तच्च भ्रातृदत्तं तद्भिभागं पितैव गृहीत्वा
तत्परिपालयेत् । तस्यैव तत्राधिकारात् । अप्राप्तव्यवहाराणामित्यादिप्रागुक्तवचनाच्च ।

यच्च वचनम् । अनीशः पूर्वजः पित्रोर्भातुर्भागे विभक्तज इति । तस्याप्ययमेव
विषयः । पूर्वजो विभागात्पूर्वमुत्पन्नः प्राप्तपितृधनविभागः पित्रोर्विभागेऽनीशो न
स्वामी । विभक्तजश्च पूर्वविभक्तस्य भ्रातृभागेऽनीश इत्यर्थः ।

विभागोत्तरश्च यत्पित्रर्जितं तदपि विभक्तजस्यैव । पुत्रैः सह विभक्तेन पित्रा
यत्स्वयमर्जितम् । विभक्तजस्य तत्पूर्वमनीशास्तं च पूर्वजाः यथा धने तथर्धे च
दानाधानक्रयेषु च । परस्परमनीशास्ते सुक्ता श्रौचोदकक्रियामिति दृष्टव्यतिसम-
खात् । स एव पित्रा सह विभक्ता ये सापत्ना वा सहोदराः । जघन्यजास्तु ये तेवा-
म्यिद्भिभागहरास्तु ते । अथ हेतुरनीशः पूर्वजः इत्यादितद्वचनोक्तएव ।

ये तु विभक्ताः पित्रा संवृष्टाः पुत्रास्तैः सह तु तस्य विभागो न सकलपितृ-
धनग्रहणमित्याह मनुः । संवृष्टास्तेन वा ये स्युर्विभजेत स तैः सह । तेन पित्रा ।

पितृर्लङ्घ्यिदं धने भ्रातृभिर्विभज्य गृहीते विभागसमयेऽस्पृष्टगर्भायाः पितृ-
पत्न्याः पश्चात्पुत्रे जाते स्वभागादायव्यवशिष्टो धितात् तैः स्वभागसमभागभाक् कर-
णीय इत्याह याज्ञवल्क्यः । दृष्ट्वा वा तद्भिभागः स्यादायव्यवशिष्टो धितात् । दृष्ट्वापु भ्रातृ-
भिर्गृहीतात् । अथः प्रतिमासं प्रतिदिनं प्रत्यहं वस्तुदुपरिदृष्टम् । अथः पितृभक्त-

र्जापाकरणं भाटभगिनीसंस्कारकरणञ्च । तस्य सर्वसाधारणेन कर्त्तव्यत्वात् । न तु भाटकर्त्तव्यव्यस्तस्यैतत्सम्बन्धाभावात् । ताभ्यामायव्ययाभ्यां विशोधितात्पिठधनात्तस्य विभागोत्तरोत्पन्नस्य विभागः पूर्वविभक्तसमः स्यादित्यर्थः । एतदुक्तम्भवति । प्रातिस्त्रिंशेषु खखभगेषु तदुत्पन्नायम्बवैश्यावश्यकञ्च साधारणं व्ययमिष्काश्याविशिष्टखखभगेषुः किञ्चित्किञ्चिदुद्धृत्य विभक्तजः खभागसमभाक् कार्य्य इति । वाशब्दस्तु विभक्तेषु सुतोजात इति पूर्वार्द्धेन सह व्यवस्थितविकल्पार्थः व्यवस्था चोक्तैव ।

हृणायुधस्तु । दृष्ट्यात् प्रत्यक्षात् न तु गुप्तात्पिठधनादित्यर्थमुक्ता । विभक्तभान्नपेक्षया योऽल्पगुणो विभक्तजस्तद्विषयोऽयम्पक्ष इत्याह ।

तन्निर्वीजत्वात् गुप्तस्यापि विभागानन्तरे ज्ञातस्य समभागेन विभजनीयत्वादत्र तदप्रवृत्तौ प्रमाणाभावान्नियमकल्पनेऽदृष्टार्थतापत्तेर्विज्ञानेश्वरोक्तार्थकतया च वचनसामञ्जस्यादुपेक्ष्यम् ।

25. असवर्णानां भाटदृशां विभागप्रकारमाह योगीश्वरः । चतुस्त्रिंशेकभागाः स्युर्वर्णशो ब्राह्मणात्मजाः । क्षत्रजास्त्रिंशेकभागा विहङ्गास्तु श्लोकभागिन इति ॥

तिष्ठो वर्णानुपूर्व्येण द्वे तथैका यथाक्रमम् । ब्राह्मणक्षत्रियविशाम्भार्या खाशूद्रजन्मन इति ॥ योगीश्वरेण ब्राह्मणस्यासर्वव्याप्तिरुक्तः क्षत्रियस्य द्वे विश एकाम्भार्या इति सवर्णामादाय तेषां मध्ये ब्राह्मणस्य चतस्रः क्षत्रियस्य तिष्ठो वैश्यस्य द्वे इत्युक्तम् । सवर्णासवर्णसर्व्वभार्याभिप्रायेण व्यादिसंस्थाने वैश्यस्यापि द्वे शूद्रापरिहारे च खैवेति खा शूद्रजन्मन इति वैश्याद्वैकक्षण्यासङ्गतेरेवासवर्णाभिप्रायैरेवं संस्थेति विज्ञानयोगिभार्यास्थातम् ।

तथा च ब्राह्मणाद् ब्राह्मण्यादिषु स्त्रीषु जाताः पुत्रा यथाक्रमं वर्णशो माहवर्णानुसारेण । संस्थैकवचनाच्छसवीम्यायामित्यधिकरणकारके शस् प्रत्ययः वर्णे वर्ण इत्यर्थः । ब्राह्मणादिभ्यः क्षत्रियादिषु जातानां मूर्द्धाभिधित्तादिजातिसंज्ञत्वेन तद्वर्णशब्देन ग्रहणासम्भवान्माहवर्णश इत्यर्थः । चतुस्त्रिंशेकभागाः स्युः । एतदुक्तम्भवति ब्राह्मणेन ब्राह्मण्यामुत्पन्ना एकैकशस्त्रतुरस्त्रतुरोभागान् लभन्ते । तेनैव क्षत्रियायामुत्पन्नास्त्रीस्त्रीन् । तेनैव वैश्यायामुत्पन्ना द्वौ द्वौ । तेनैव शूद्रायामुत्पन्ना एकमेकमिति । वर्णश इति सर्वत्रोत्तरोत्र सम्बध्यते । तथा च क्षत्रात् क्षत्रियादिषु जाता यथाक्रमं स्त्रीस्त्रीन् द्वौ द्वौकैकश्च लभन्ते । विह्वैश्यादिषु जाता यथाक्रमं द्वौ द्वौकैकमेकं लभन्त इति । शूद्रस्यासवर्णभार्याभावात्तत्पुत्राणां सजातीयपुत्रभागः पूर्वोक्त एव ।

यद्यपि शूद्रापरिहृत्यने द्विजातेर्भूर्याक्षेपः पुत्रार्थविवाहस्तु सर्वथा शूद्राणां निषिद्ध एव । तथा च मनुविष्णु । क्षीणजातिं स्त्रियं मोहादुद्धृत्यो द्विजातयः । कुलान्येव नयन्त्यासु ससन्तानानि शूद्रताम् । शूद्रावेदी पतत्यत्रैतच्छतनयस्य च । शून्यकस्य सुतोत्पत्त्या तदप्रत्यतया भृगोः ॥ तदप्रत्यतया शूद्राभाजनितापत्यवत्तया ब्राह्मणस्य तु क्षत्रविहपेक्षयाप्यधिकदोषतामाह तुस्तत्परिहृत्ये तावेव । शूद्रां श्रयणमदोष्य ब्राह्मणो यात्यधोगतिम् । जनयित्वा सुतन्तस्यां ब्राह्मण्यादेव क्षीयत इति ॥

योगीश्वरोऽपि । यदुच्यते द्विजातीनां श्रुद्रादारोपसंग्रहः । नैतन्मम मतं यस्मात्त-
चात्मा जायते स्वयमिति ॥ तेन विप्रादिजातश्रुद्रापुत्राभावात्कथन्तस्यांशमभिधानमिति
प्रतिभाति ।

तथापि रतिधर्मार्थविवाहयोरनुकल्पत्वेन परिणीतायां श्रुद्रायामनुवङ्गाज्जातस्य
विभागाभिधानमुपपन्नमेव । श्रुद्राज्जातो निषादो यः पारश्वेति जातिकथनमिव ।
आचारमिताक्षरायामेवं व्यवस्थापितं । अतएव मनुना । कामतस्तु प्रवृत्तानामिमाः
स्युः क्रमशोऽवरा इति । कामत इत्यवरा इति च वदता सर्वार्थापरिख्यनमेव मुख्यभि-
त्युक्तम् । शङ्खलिखिताभ्यामपि । भार्याः कार्यः सजातीयः सर्वेषां श्रेयस्यः स्युरिति
पूर्वः कल्पस्ततोऽनुकल्पश्चतस्रो ब्राह्मणस्यानुपूर्व्येण तिस्रो राजन्यस्य द्वे वैश्यस्य एका
श्रुद्रस्येति । आनुपूर्व्येणेत्युक्तेवत्तरोत्तररुद्धधन्यता सूचिता ।

यत्तु मनुना चातुर्वर्ण्यपुत्रविभागे प्रकारद्वयमुक्तम् । चंशन्दायादरेद्विप्रो द्वावंशौ
क्षत्रियास्ततः । वैश्याजोऽध्यर्धमेकांशमंशं श्रुद्रास्ततो हरेत् । सर्वं वा रिक्त्वजातस्तु
दशधा परिकल्प्य तत् । धर्मं विभागं कुर्वीत विधिनानेन धर्मवित् । चतुरोऽंशान्
हरेद्विप्रस्त्रीनंशान् क्षत्रियास्ततः । वैश्यापुत्रो हरेद्विप्रमंशं श्रुद्रास्ततो हरेदिति ॥
तत्रोत्तरप्रकारो योगीश्वरसंवादी । तद्गुणवदगुणवत्क्षत्रियादिपुत्रविषयतया व्यव-
स्थापनीयम् । अतएव ब्राह्मणजातो राजन्यापुत्रएव यदि जन्मव्येष्टो गुणवाञ्छ तदा
ब्राह्मणीपुत्रसमांशभाक् ब्राह्मणेन क्षत्रियेण च वैश्यायास्तनितस्तादृक् क्षत्रिया-
पुत्रसमांशभागित्वाह वृहस्पतिः । विप्रेण क्षत्रियाजातो जन्मव्येष्टो गुणान्वितः ।
भवेत् समांशो विप्रेण वैश्याजातस्तथैव च ॥ तथा बौधायनः । सर्वार्थापुत्रानन्तरापुत्र-
योरनन्तरापुत्रश्चेद्गुणवान् स व्येष्टांशं हरेत् । गुणवान् हि श्रेयाभ्याम्भसां भवतीति ॥
एतद्वचनेऽनन्तरात्पन्नमात्रस्य गुणवत्त्वव्येष्टताप्रयुक्तोत्क्रष्टपुत्रसमांशभाक्कोक्तेः वैश्यज-
श्रुद्रापुत्रस्याप्येवंविधस्य वैश्यापुत्रसमांशिता वृहत्या वृहस्पत्यनुक्तापि । व्येष्टांशं हरे-
दित्यस्योत्क्रष्टसमांशहरणमेवार्थो वृहस्पतिसंवादादुत्तमजातीयापेक्षयाधिकंशानौ-
चित्याच्च ।

यदा तु श्रुद्रा एवैकः पुत्रो ब्राह्मणस्य । तदा स तद्वनद्वितीयांशहारी भागद्वयं
सपिण्डानां तदभावे सकुल्यनान्तेषामप्यभावे आह्वकतुः । यदाह देवकः । निषाद-
एकपुत्रस्तु विप्रस्य स द्वितीयभाक् । द्वौ सपिण्डः सकुल्यो वा स्वधादाताथवा हरेत् ।
ब्राह्मणाश्चद्रायां जातो निषादः स एकस्त्रासौ पुत्रश्चेत्यर्थः ।

क्षत्रियवैश्ययोस्तु श्रुद्रएवैकः पुत्रः स धनार्द्धहरोऽपरमर्द्धमपुत्रधनग्रहणाधिका-
रिक्तस्तद्वत्क्रमेण गृह्णीयुः । तथा च विष्णुः । द्विजातीनां श्रुद्रस्त्वेकपुत्रोऽर्द्धहरोऽपुत्र-
कथ्यस्य या गतिः साऽर्द्धस्य द्वितीयस्येति । द्विजातिपदेनात्र क्षत्रियवैश्यमात्रग्रहणम् ।
देवलेन ब्राह्मणे विशेषाभिधानात् । एकपुत्र इति कर्मधारयः ।

इदमपि सदृशातिगुणवच्छ्रुद्रापुत्रविषयम् । अन्यथा । यद्यपि स्यात्तु सत्युच
इत्यादिना ब्राह्मणक्षत्रियविभ्रामिवादिना च वक्ष्यमाणमनुवचनेन विरोधापत्तेः ।

यद्यपि सामान्यत इयम्भागस्तृप्तिवक्ता तथापि प्रतियहप्राप्तभूमिस्थितिरिक्त-
विद्यया क्षत्रियादिसुतानाम्नात्र भागप्रतिषेधात् । तथा च दृष्टं सति । न प्रतियह-
भूदेया क्षत्रियादिसुताय वै । यद्यप्येषां पिता दद्यान्मृते विप्रासुतो हरेत् ॥ अत्र प्रति-
ग्रहोपादानात्क्रयादिप्राप्तायाम्भवत्येव तेषामपि भागः स्वजात्यर्थ इति सूचितम् ।
अतएव भूमिमात्रविषये शूद्रापुत्रस्य पृथङ्निषेधो देवलोक्तः । शूद्रां विजातिभि-
र्जातो न भूमेर्भागमर्हति । सजातो वाप्रायात्सर्वमिति धर्मो व्यवस्थित इति ।

यत्तु । ब्राह्मणक्षत्रियविशां शूद्रापुत्रो न रिक्त्यभाक् । यदेवास्य पिता दद्यात्त-
देवास्य धनं स्मृतमिति मनुवचनम् । तत्पिठप्रीतिदत्तधनसङ्गावविषयमिति दाक्षि-
णात्याः । निर्गुणापरिशीतशूद्रापुत्रविषयमिति तु पौरस्त्यास्तन्मन्वम् । यदेवास्येत्यादि-
वाक्यशेषोपात्तव्यवस्थामपहायानुपात्तसगुणनिर्गुणव्यवस्थायाः कल्पयितुमनर्हत्वात् ।
अपरिशीतशूद्रापुत्रभागस्य च दासप्रस्तावेऽभिधास्यमानत्वात्प्रायेव व्यवस्था सुस्था ।

PART II.

1. मुख्यामुख्यपुत्राणां विभागव्यवस्थां वक्तुं तत्स्वरूपं निरूप्यते । तत्र याज्ञ-
वल्क्यः । बौरसो धर्मपत्नीजस्तत्समः पुत्रिकासुतः । क्षेत्रजः क्षेत्रजातस्तु सगोत्रेणैतरेण
वा । गृहे प्रच्छन्न उत्पन्नो गूढजस्तु सुतः स्मृतः । कानिनः कन्यकाजातो मातामहसुतो
मतः । अक्षतायां क्षतायां वा जातः पौनर्भवः सुतः । दद्यान्माता पिता वा यं स
पुत्रो दत्तकः स्मृतः । क्रीतश्च ताभ्यां विक्रीतः क्षत्रिमः स्यात् स्वयं क्षतः । दत्तात्मा तु
स्वयन्दत्तो गर्भे विन्नः सहोऽजः । उत्सृष्टो गृह्यते यस्तु सोऽपविद्धो भवेत् सुतः ॥

2. सर्वार्था धर्मविवाहात्ता धर्मपत्नी तस्यां जातः बौरसः पुत्र इति मिता-
क्षरा । वस्तुतस्तु नेदमेव बोद्धव्यम् । अनुबोमजानाम्भूर्द्धाभिधिक्षादीनामौरसेव्यन्त-
र्भावादिति स्ववचनविरोधात् । न हि ते सर्वार्थायामुत्पन्ना । ब्राह्मणादिषु येषां ये
न धर्मविवाहास्तदूढोत्पन्नानामौरसत्वप्रसङ्गे तेषु सत्त्वप्यन्धेषान्दायग्रहप्रसङ्गाच्च ।
तस्मादुत्कर्षाभिप्रायं सर्वार्थाग्रहणं धर्मपत्नीजत्वमात्रं वाक्योपात्तं क्षेत्रजादिष्वान्वर्तकं
नक्षत्रम् ।

अतएव मनुः । संस्तृतायां स्वभार्यायां स्वयमुत्पादयेत्तु यम् । बौरसस्तं विजा-
नीयात्पुत्रं प्रथमकल्पिकम् ॥ वशिष्ठोऽपि । द्वादशैव पुत्राः पुराणदृष्टाः स्वयमुत्पादितः
स्वक्षेत्रे संस्तृतायामौरसः प्रथम इति ॥ विश्वरूपि । अथ द्वादश पुत्रा भवन्ति स्वक्षेत्रे
संस्तृतायामुत्पादितः स्वयमौरसः प्रथम इति ॥ अत्र वचनद्वयेऽपि स्वक्षेत्रे संस्तृताया-
मिति व्याख्यानव्याख्येयभावोऽन्यथा पौनरुप्यापत्तेः । देवकः । संस्तृतायां स्वभार्यायां
स्वयमुत्पादितो हि यः । बौरसो नाम पुत्रः स प्रधानः पिठवर्षप्रभृक् ॥ आपस्तम्बः ।
सर्वार्थां ब्राह्मणविहितां यद्यर्शु गच्छतः पुत्रास्तेषां धर्माभिसम्बन्धः दायेनात्यतिक्रमञ्चो-
भयोर्मुतापिचोः । बौधायनः । सर्वार्थायां संस्तृतायां स्वयमुत्पादितमौरसं पुत्रं

विद्यात् । अथापुदाहरन्ति । अङ्गादङ्गात्सम्भवसि हृदयादभिजायसे । आत्मा वै पुत्रनामासि स जीव शरदः शतम् । आधत्त पितरो गर्भे कुमार पुष्करखजम् । यद्येह पुरुषायात्मा तथा त्वमिह जायसे । आत्मा पुत्र इति प्रोक्तः पितुर्मातुरनु-
ग्रहात् । पुत्राद्वस्त्रायसे यस्मात्पुत्रस्तेनासि संज्ञित इति ॥

आपस्तम्बीयबोधायनीययोः सर्वार्थाग्रहणमुत्कर्षाभिप्रायकमेव । अतएवासव-
र्णासूतृपन्नानामप्यौरसपुत्रप्रस्तावएव विभागप्रकारः उक्तः सङ्गच्छते । आपस्तम्बवचने
सर्वार्थामपूर्वामिति रत्नाकरे धृतः पाठोऽपूर्वो न पूर्वः पतिर्यस्याः सा वाग्दत्तापि
या न भवतोत्यर्थ इति प्रकाशकार इति व्याख्यातश्च । पारिजातेऽप्युक्तम् । सर्वार्थान्
दिजस्य दिजा श्रूयस्य श्रूया ।

न तु ब्राह्मणस्य ब्राह्मणी क्षत्रियस्य क्षत्रिया वैश्यस्य वैश्या । अन्यथा ब्राह्म-
णादिपरिणीतक्षत्रियादिपुत्राणां द्वादशपुत्रान्तर्भावो न स्यादिति ।

3. पुत्रिकायाः सुतः पुत्रिकासुतः स तत्समः । यथाह श्लोकं वशिष्ठः ।
अम्नाढकां प्रदास्यामि तुभ्यङ्गन्यामलङ्कृताम् । अस्यां यो जायते पुत्रः स मे पुत्रो
भवेदिति ॥ मनुरपि । अपुत्रोऽनेन विधिना सुतां कुर्वीति पुत्रिकाम् । यदपत्यं भवेद-
स्यान्तन्मम स्यात् स्वधाकरम् । अनेन तु विधानेन पुरा चक्रेऽथ पुत्रिकाम् । विष्टव्यार्थं
स्ववंशस्य स्वयं दत्तः प्रजापतिः । ददौ स दश धर्माय कश्यपाय त्रयोदश । सोमाय
राज्ञे सत्कृत्य प्रीतात्मा सप्तविंशतिम् ॥ अत्र परिभाष्य दत्तायामुत्पन्नः पुत्रिकापुत्रो
मातामहस्येत्युक्तम् । अपरिभाषितदत्तायामपि सम्भवतीति भ्रातृमतीमिति विशेषण-
मुपुत्रिकाकरणशङ्कानिबृत्त्यर्थम् अनेन चापरिभाषितापि पुत्रिका भवतीत्याचारमि-
ताक्षरायां निरूपितम् । अतएव गौतमेऽपि । पितोत्पृजेत्पुत्रिकामनपत्यो मदर्थमप-
त्यमिति सम्बाध । अभिसन्धिमात्रात्पुत्रिकेत्येकेषामिति ॥ ब्रह्मपुराणेऽपि । अपुत्रेण
तु या कन्या मनसा पुत्रवत्कृता । राजाभिवान्वयेभ्यश्च समक्षं वाथ कुत्रचित् ।
प्राग्भर्ममथवा शुल्कयुक्ता पित्रा वराय वा । मृते पितरि वा दत्ता सा विज्ञेया तु
पुत्रिका । पित्राद्वत्स्यात्समम्भागं लभेत तादृशी सुतेति ॥ मनुः । मातुः प्रथमतः पित्र्यं
निर्वपेत्पुत्रिकासुतः । द्वितीयन्तु पितुस्तस्यास्तृतीयन्तु पितुः पितुरिति ॥

अथवा पुत्रिका चासौ सुतश्च पुत्रिकासुत इति पुत्रिकैव पुत्रस्थानीयेत्यर्थः ।
तस्याश्चौरसो जातत्वेऽपि कन्यात्वात्पुत्रसमत्वमिति वयम् । पित्रवयवानामल्पत्वान्मात्रव-
यवानां बाहुल्याच्चौरससमत्वमिति मिताक्षरा । यथाह वशिष्ठः । द्वितीयः पुत्रः पुत्रि-
कैवेति ।

4. द्यामुध्यायशक्तु । अपुत्रेण परक्षेत्रे नियोगोत्पादितः सुतः । उभयोरप्यंसौ
रिक्थी पित्र्यदत्ता च धर्मत इति याज्ञवल्क्येऽपि । स वीजिनो यद्यप्यौरसस्तथाप्यन्य-
क्षेत्रात्पुत्रत्वादौरसादप्रकृत्यएव । अतएवौरसो धर्मपत्नीज इत्यौरसलक्षणं तेनैवाभि-
हितम् । अस्माभिरपि क्षेत्रजत्वानपायात्क्षेत्रजपुत्रमध्यएव व्याख्यास्यते ।

मनुरपि । क्रियाभ्युपगमात् क्षेत्रं वीजार्थं यत्प्रदीयते । तस्येह भागिनौ दृष्टौ

बीजं क्षेत्रिकश्च च ॥ यथा लोके क्रियाकर्षणास्थातादभ्युपगमात् । एकस्य वापार्थं बीजं प्रोक्षादि नास्ति क्षेत्रमस्ति अपरस्य क्षेत्रं नास्ति बीजमस्ति । तत्र तौ मदीयं बीजन्त्वदीयं क्षेत्रं तत्र तदावापेन कृषिं कुर्वन्तत्रोत्पन्नं फलमावयोरस्त्वित्यभ्युपगमं सम्बिदं यदि कुरुतस्तथा सति दावपि तत् फलभागिनौ दृष्टौ । तथा ह्यामुष्यायख-
स्थलेऽप्यत्रोत्पन्नमावयोरस्त्विति संविदा यद्येकस्य क्षेत्रेऽपरः स्वबीजमावपति तदुत्पन्नम-
प्यपत्यमुभयोर्भवतीति तस्य क्षेत्रजस्य द्विपिष्टकत्वेन ह्यामुष्यायखसंज्ञा ।

अत्र याज्ञवल्क्येन नियोगोत्पादित इत्युक्तेर्गुणनियुक्तस्यैव देवरसपिण्डादर्भात्रा-
दिभार्यायां वृताभ्यङ्गादिविधितः पुत्रोत्पादनमितरथा प्रत्यवाय उभयोरित्युक्तं
भवति । तथा च मनुः । अपुत्राङ्गुर्वनुज्ञातो देवरः पुत्रकाम्यया । सपिण्डो वा सगोत्रो
वा वृताभ्यङ्ग ऋतावियात् । अनेन विधिना जातः क्षेत्रजोऽस्य भवेत्युतः ॥

यदा त्वनभिसन्धाय द्वयोरपत्यं परक्षेत्रे देवरादिना बीजमुप्यते तदा क्षेत्रिणश्च
तदपत्यम् । तदप्याह मनुः । फलन्वनभिसन्धाय बीजिनां क्षेत्रिणान्तथा । प्रत्यक्षं
क्षेत्रिणामर्थो बीजाद्योनिर्बन्धोयसीति ॥ फलमपत्यरूपमनभिसन्धाय यत्र परक्षेत्रे
यदपत्यमुत्पाद्यते तत्क्षेत्रस्त्रामिनश्च भवति । यथा लोके परक्षेत्रे ब्रीह्यादिवीजं
क्षेत्रस्त्रामिना सह सम्बिदमस्त्यैव पञ्चादौ परकीयेऽन्यदीयो नगान्धादिर्वीर्यमावपति
तत्रोभयत्रापि क्षेत्रस्त्रामिनश्च तदुत्पन्ने फले स्त्राम्यं दृश्यत इति प्रत्यक्षमित्यस्यार्थः ।
तत्र हेतुर्वीजाद्योनिर्बन्धोयसीति । गवान्धादौ तथा दर्शनादिति भावः । तथा
चाभिसन्धौ सत्येव क्षेत्रजस्य बीजिस्त्राम्येन ह्यामुष्यायखत्वं क्षेत्रस्त्रामिस्त्राम्यन्तु क्षेत्रज
उभयत्रापि कृषितोऽर्थः । अतएव यद्यपि याज्ञवल्क्येनापुत्रेणेत्यादिवचने वीज्यभि-
सन्धिर्नोपात्तस्तथापि मन्वाद्येकमूलकतयानुसन्धेयः । अतएव । क्षेत्रजः क्षेत्रजातस्तु
सगोत्रेणेतरेण वा । इत्यनभिसन्धिसाधारणं क्षेत्रजलक्षणमुक्तमन्यथा पौनस्त्यापत्तेः ।
सगोत्रेण देवरसपिण्डादिना । इतरेणासगोत्रेणेत्यनुक्तस्यः । मनुना सपिण्डो वा
सगोत्रो वा इत्यभिधानात् ।

नियोगश्च वाग्दत्ताविषय इत्येताच्चार्याः । यस्या ज्ञियेत कन्याया वाचा सत्ये
कृते पतिः । तामनेन विधानेन निजो विन्देत देवर इति मनुना तत्रैव नियोगविधिना
पुत्रोत्पादनस्य नियमितत्वात् । विधवानियोगस्य प्रवृत्त प्रतिषिद्धत्वाच्च । तथाहि ।
देवराद्वा सपिण्डाद्वा स्त्रिया सम्यङ्नियुक्तया । प्रजेषिताधिगन्तव्या सन्तानस्य परि-
क्षये । विधवायां नियुक्तस्तु वृताक्तो वाग्यतो निश्चि । एकमुत्पादयेत् पुत्रं न द्वितीयं
कथञ्चनेति ॥ इत्यादिविधवानियोगमुपन्यस्य निषेधयति स्वयमेव मनुः । नान्यस्मिन्
विधवा नारी नियोक्तव्या द्विजातिभिः । अन्यस्मिन् हि नियुक्तानां धर्मं हन्युः सनात-
नम् । नेदादिकेषु मन्त्रेषु नियोगः कीर्त्यते क्वचित् । न विवाहविधानुक्तं विधवावेदनं
पुनः । अयं द्विजैर्हि विद्वद्भिः यमुधर्मो विगर्हितः । मनुष्यान्नामपि प्रोक्तो वेद्यौ राज्यं
प्रशासति । स महीमखिनाम्मुञ्चन् राजर्षिप्रवरः पुरा । वर्षाणां सङ्करश्चक्रे कामोप-
हतचेतनः । ततः प्रभृति यो मोहात्प्रसीतपतिक्षां स्त्रियम् । नियोजयत्यपत्यार्थं न
विगर्हन्ति साधव इति ॥

अत्र वाग्दत्ताशब्देन तुभ्यमहं सम्पद इत्यादि सङ्ख्यवाक्येन कन्यादात्रा दत्ता गृह्यते । विधवाशब्देन तु सप्तपदीपर्यन्तविवाहोऽत्र पञ्चानुश्रुतपतिः । न तु विवाहात्प्रागनियतकालप्रतिश्रवणरूपवाग्दानदत्तायाः । अथङ्गेऽपतितेऽस्तीवे दग्गदोषविवर्जिते । इमां कन्यां प्रदास्यामि देवाभिगुरुसन्निधाविति वाक्येन प्रति-
 क्षायते । अतएव पतिरिति मनुनोक्तम् । प्राग्भाविप्रतिश्रवणस्य विवाहप्रयोग-
 वहिर्भावेन प्रतिश्राव्यस्य पतित्वानुत्पत्तेः पतिशब्देन निर्देशानुपपत्तेः । यद्यपि
 सङ्ख्यिताया अपि न स पतिर्ज्ञातः । भार्यात्वव्यपत्तित्वस्याप्यलौकिकसंस्कारात्म-
 कत्वेन विवाहभावनाभावस्य सततं प्रागनुत्पत्तेः । तथापि प्रयोगोपक्रमे तत्फल-
 भूततद्वावहारसम्भवः । यजमानेष्टितः प्रागप्याहवनीयव्यवहारवत् । प्रतिश्रवणमात्रे
 तु न तदुपक्रमोऽपीति सर्वथा पतित्वव्यपदेशोऽनुपपन्नः । अतएव प्रतीच्योदीच्यादीनां
 विवाहाददवीयःप्राक्काले वाग्दत्तायास्तदुद्देशे गृह्यतेऽपि पुनरविगीतशिशैरन्येन सह
 विवाहः क्रियते । अन्यथा कलौ नियोगविधेरपि निषिद्धतया पुनरक्षताविवाहस्य
 दूरापास्ततया स दुराचारएव स्यात् । तथा चायमर्थः । वाचा सत्ये कृते सङ्ख्य-
 वाक्येन दाने कृते सति यस्याः पतिः पतित्वभात्यकविवाहभावनाविषयीभूतः पुरुषो
 ज्ञियेतेति । न च विहितप्रतिषिद्धत्वादिकल्पएव विधवानियोगस्थास्त्विति वाच्यम् ।
 वस्तुनि विकल्पासम्भवात् । नहि विधवायां नियोगात्प्रवृत्तस्य प्रत्यवायो भवति न
 भवति वेति सम्भवति । नियोगविधेर्यस्या ज्ञियेतेत्यादिवचनेन वाग्दत्ताविषयत्वे
 नियन्त्रिते विधवाविषये प्रवृत्त्यभावाच्च नियोजयितृणां निन्दाश्रवणात् स्वोधर्मेषु व्यभि-
 चारस्य वज्रदोषजनकत्वश्रवणात् संयमस्यातिप्रशंसनाच्च तुल्यबलत्वस्यापि विधि-
 प्रतिषेधयोरभावात् । तथा च मनुरेव । कामन्तु क्षपयेद्देहं पुष्पमूलफलैः शुभैः । न तु
 नामापि गृहीयात्पत्न्यौ प्रेते परस्य त्विति जीवनाथं पुरुषान्तराश्रयणे निषिद्धे ।
 आसीतामरणात् क्षान्ता नियता ब्रह्मचारिणी । यो धर्म एकपत्नीनां काङ्क्षन्ती तमनु-
 त्तमम् । अनेकानि सदृशाणि कुमारब्रह्मचारिणाम् । दिवं गतानि विप्रानामहत्वा
 कुलसन्ततिम् । गृह्यते भर्तारि साध्वी स्त्री ब्रह्मचर्ये व्यवस्थिता । स्वर्गकृत्स्नपुत्राणि
 यथा ते ब्रह्मचारिणः । अपत्यलोभाद्या तु स्त्री भर्तारमतिवर्त्तते । सेह निन्दामवा-
 प्रेति पतिलोकाच्च ह्रीयत इति पुत्रार्थमपि पुरुषान्तराश्रयणं निन्दातिशयपुरःसर-
 मतिषिद्धवान् । पश्चात् स्वयमेव यस्या ज्ञियेतेत्यनेन वाग्दत्ताविषयनियोगस्य च
 धर्मत्वमुक्तवान् । अनेन विधानेनेत्युक्ताऽन्यथा । यथा विध्यधिगम्येनां सुक्तवद्वां सुचि-
 त्रताम् । मिथो भजेताप्रसवात्सुहृत्सुहृतादृताविति विधानमपि दर्शितवान् ।
 छताभ्यङ्गगुर्वनुज्ञादिः पूर्वोक्तः स्मृत्यन्तरोक्तश्च यो विधिः सोऽप्यनेनेति सर्वनाम्ना
 परागृह्यते । देवरग्रहणं सपिण्डादेरपलक्ष्यम् । वचनान्तरानुसारात् । पतिपदं
 वाचा सत्य इति च व्याख्यातमेव ।

यस्मै वाग्दत्ता स प्रतिग्रहमन्तरंयैव तस्याः पतिरित्यस्मादेवावागम्यत इति
 मिताक्षराग्रन्थोऽप्यस्मदुक्तार्थाभिप्रायकतयैव नेयः । यथा श्रुते दोषस्योक्तत्वात् । अत-

एवायेतनोयथः । अथच विवाहे यच्चरताभ्यङ्गादिनियमवाप्तियुक्तागमनाङ्गमेवेति न देवरस्य तस्याभ्यर्थात्त्वमापादयति । अतस्तदुत्पन्नमप्यं चोत्रस्वामिन एवासत्वां सम्बिदि । सम्बिदि सम्बिदैव तुभयोरपीति ।

नारदः । चोत्रिकानुमते वीजं यस्य चोत्रे प्रसिच्यते । तदपत्वं द्वयोरेव वीजिच्छे-
त्रिकयोर्मतम् ॥ शृङ्गलिखितौ । मन्त्रसंस्कारकर्तुरपत्यमित्याङ्गिरसोवीजिच्छेत्रिक-
योरनुमते यद्वीजम्यकीर्यते तत्तद्विधा शस्यमित्युच्यते ॥ कात्यायनः । चोत्रिकस्य मते-
नापि पञ्चमुत्पादयेत्तु यः । तस्येह भागिनौ तौ तु न पञ्चं हि विनैकतः ॥

हारीतः । जीवति चोत्रजमाऊरखातन्त्रान्मृते ह्यामुध्यायणमनुम्रवीजत्वात् ।
नावीजं चोत्रं पञ्चति । नाचोत्रं वीजं रोह्यभयदर्शनादुभयोरपत्यमित्यपरे । तेषामुत्पा-
दयितुः प्रथमः प्रवरो भवति । द्वौ पिण्डौ निर्वापे दद्युरेकपिण्डे वा दावनुकीर्त्तयेत् ।
द्वितीये पुत्रस्तृतीये पौत्रो लेपिनश्च त्रीन्वाचक्षाण्य आसप्तमादित्येके ॥

जीवति चोत्रपतौ तस्यैव चोत्रजं पुत्रमाऊः । अत्र हेतुरखातन्त्रात् स्त्रिया
इत्यर्थः । मृते तु चोत्रपतौ । अपुत्राशयनं भर्तुंरित्यादिवक्ष्यमाणमनुवचनादखा-
तन्त्रमविशिष्टं यद्यपि तथापि न चोत्रिण्येव तत्र हेतुरनुम्रवीजत्वात् चोत्रिणो
वीजिनम्यत्वनुमत्यवशंभावादित्यर्थः । तत्रोपपादकता वीजमित्यादि निर्वापे निरूप्यते-
ऽस्मिन्निति निर्वापः पिण्डपिण्डयश्चस्त्र ह्यामुध्यायणाः पिण्डद्वयाय द्वौ पिण्डौ पृथग्दद्युः ।
एकपिण्डे वा द्वौ पितरावनुकीर्त्तयेत् । एकैकस्मिन् द्वौ दाविति वीष्मा बोधा । यदि
द्विपितास्यादेकैकस्मिन् पिण्डे द्वौ दावुपलक्षयेदित्यापस्तम्बस्मरणात् । त्रयाणामपि
द्वित्वादिति भावः । द्वितीय इत्यादि । द्वितीयं तृतीयं चारभ्येत्यर्थः । लेपिनश्च त्रीणि-
त्यादि । तत्कीर्त्तनेऽपि द्वौ दावनुकीर्त्तयेदित्यर्थः ।

नारदोऽपि । ह्यामुध्यायणका दद्युर्द्वौ पिण्डौदेके पृथक् । ऋक्थादर्द्धांशमादद्यु-
र्वीजिच्छेत्रिकयोस्तथा ॥ अर्द्धांशमिति यथोचितभागोपलक्ष्यम् ।

बौधायनः । अथाप्युदाहरन्ति । द्विपितुः पिण्डदानं स्यात् पिण्डे पिण्डे च
नामनी । त्रयश्च पिण्डाः षष्ठां स्युरेवं कुर्वन्न दुष्यतीति ॥ षष्ठां पिण्डपितामहप्रपिता-
महानाम् । स एव । मृतस्य प्रभूतो यश्च स्त्रीवस्य व्याधितस्य वा । तेनानुमतस्य चोत्रे
स चोत्रजः स च द्विपिता द्विगोत्रश्च द्वयोरपि स्वधाऋक्थभागभवति ॥

मनुः । यस्तत्पुत्रजः प्रमीतस्य स्त्रीवस्य व्याधितस्य वा । स्वधर्मेण नियुक्तायां स
पुत्रः चोत्रजः स्मृतः ॥

अत्र सर्वत्र जीवति चोत्रिणि व्याध्यादिप्रतिबद्धपुत्रोत्पादने यथायोगं गुरुणा-
म्भर्तुरपि नियोगः सम्बिच्च । मृते तु गुरुणामेव ।

तथा च चोत्रजो द्विविधो द्विपिण्डकः चोत्रिकपिण्डकश्च ।

5. गृहे प्रच्छन्न उत्पन्नो जारात्यखात्यवर्णजातित्वेन निर्णीतः चोत्रस्वामिनो
गूढजो नाम पुत्रः । मनुः । उत्पद्यते गृहे यस्य न च ज्ञायेत कस्य सः । स गृहे गूढ
उत्पन्नस्य स्याद्यस्य तत्पुत्रः ॥ नचेत्यादि । पुत्रविशेषजन्यत्वेनाज्ञातोऽपि सर्वज्जार-

जन्यत्वेन ज्ञातः । सजातीयेष्वव्योक्तस्तनयेषु मया विधिरिति योगीश्वरोक्तेस्तच्च
व्याख्यास्यते ।

६. कानीनः कन्यकायामपरिणीतायां सर्वार्थाज्ज्ञातः स मातामहसुतो यस्य सा
कन्या तस्यैव पुत्रः इत्यर्थः । परिणीतायान्तु जातो वोढुरेव तु गूढजः । यथाह मनुः ।
पितृवेष्वपि कन्या तु यन्मुत्रजनयेद्ब्रह्मः । तं कानीनं वदेन्नाम्ना वोढुः कन्यासमुद्भव-
मिति ॥ एतैर्वाक्यैरपरिणीतायां पितृगृह्यावस्थितायां सर्वार्थजारजः कानीनः स च
मातामहसुत इत्युक्तं ।

तद्विरुद्धं ब्रह्मपुराणीयं कल्पतरुलिखितं वाक्यम् । अदत्तायान्तु यो जातः
सर्वार्थेन पितुर्गृहे । स कानीनः सुतस्तस्य यस्मै सा दीयते पुनः ॥ नारदवाक्यमपि
तत्रैव । कानीनश्च सहेोढश्च गूढायां यश्च जायते । तेषां वोढा पिता ज्ञेयस्ते च
भागधराः स्मृता इति ॥ अत्रादत्तायां सर्वार्थात् पितुर्गृहे जातस्य कानीनत्वमविरुद्धम् ।
यस्मै सा पुनर्दीयते तस्यासौ सुत इति विरुद्धं । नारदवचनेऽपि गूढोत्पन्नसहेोढकानीन-
स्यापि वोढेव पितेति प्रतिपादितम् । मनुनापि वोढुरित्युक्तं न मातामहस्येति । या
तु मिताक्षराकृता यद्यनूढायामुत्पन्नस्तर्हि मातामहसुतोऽप्यनूढायान्तदा वोढुरेवेति
व्यवस्था कृता । सापि मनसि न चमत्कारमादधाति । तथा सति हि कन्याशब्दवा-
च्यायामपरिणीतायामजातत्वात् तस्य कानीनत्वन्दुर्वचम् । न च कन्याशब्दः अपत्यमा-
त्रपरोविशेषणवैयर्थ्यात् । गूढजादीनामपि तत्रोत्पन्नत्वेनाव्यावर्तकत्वात् । सर्वार्थाह कस्य-
चित्कन्यैव । ब्रह्मपुराणवचनविरोधश्च दुष्यरिहरस्तत्रादत्तायामित्युक्तत्वात् । अतएव
मानवविरोधोऽपि दुःसमाध एव । कल्पतरुकारेणापि परस्परविरुद्धवचनानि लिखि-
तवता हृदयशून्यवद्वावस्थानभिधानाद्विरोध एव न प्रतिसंहितः । तेन हि मातामह-
सुतत्वज्ञानीनस्य बोधयन्ति बह्वनि वचनान्युपन्यस्य तद्विरुद्धे ब्रह्मपुराणनारदवचने
तदनुपदमेव लिखिते । तत्र वशिष्ठस्य वचः । कानीनः पञ्चमः या पितृगृहेऽसंस्कृता
कामादुत्पादयेत्स कानीनो मातामहस्य पुत्रो भवतीत्याह । अथाप्युदाहरन्ति । अपुत्रा
दुहिता यस्य पुत्रं विन्देत तस्यजः । यौत्री मातामहस्तेन दद्यात्पिण्डं हरेर्जनमिति ॥
नारदस्यैवम् । अज्ञातपितृको यस्तु कानीनोमूढमाढकः । मातामहस्य दद्यात्स पिण्डं
रिष्यं हरेत्ततः ॥ बौधायनस्यापि । असंस्कृतामनतिष्ठयां यामुपगच्छेत्तस्यां यो जातः
स कानीन इति ॥

अत्र प्रतिविदध्याः । मातामहसुतत्वं कानीनस्य प्रतिपादयतां वचनानां सर्वार्था
या न दत्ता तस्यां सर्वार्थजातविषयत्वम् । वोढुः सुतत्वं प्रतिपादयतान्तु सङ्गृह्यितायां
सप्तपदीपर्यन्तं विवाहभावनाभावाभार्यात्वमप्राप्तायां यः सर्वार्थादुत्पन्नस्तद्विषयत्वम् ।
अदत्तायामिति नारदवचने बौधायनवचने चानतिष्ठयामिति पदाभ्यामसमाप्त-
विवाहभावनोच्यते न तु सर्वार्थादत्ता । युक्तश्चैतत् । सङ्गृह्येन पितृस्त्वापगमपरिबे-
दस्त्वतोत्पत्तेरपक्रमात् । पितुः सर्वार्था स्त्वापगमाभावाच्च कानीनत्वव्यपदेशस्य परिबे-
दस्त्वतोपक्रमेण तदीयत्वस्य च सम्भवात् । पूर्वपितृस्त्वत्वे तु तदुत्पन्नस्य मातामहसुत-

त्वोपपत्तेः । मनुवचनस्याप्ययमर्थः । या सङ्गस्थिताऽसमाप्तविवाहभावना अतएव कन्या परिब्रूहेभार्यात्वस्यानिव्यप्तेः । तादृशकन्यासमुद्भवं कानीननामानं वोढुर्येन विवाह्यते तस्य वदेदिति । अतएव पिढवेक्ष्मनोत्वपि सङ्गतमनुवादतया । विवाहानन्तरमेव भर्तृगृहप्रवेशात् । मिताक्षराग्रस्यस्याप्ययमर्थः । अनूढायां वोढुमनुपक्रान्तायाम् । ऊढायां वोढुमुपक्रान्तायामिति । आदिकर्मणि क्तः । न तु भूते । समाप्तविवाहभावनायान्तु सर्वव्यञ्ज्यारजातो गूढजः । अतएव गृहे प्रच्छन्न उत्पन्नो भर्तृगृहे तेनाज्ञातो जात इत्युक्तम् ।

7. पुनर्भूर्द्धिविधा । विवाहमात्रेणाक्षताप्यन्येन परिणीयमानेका । अन्या तु विवाहात्प्रागेव पुरुषसम्भोगदूषिता । तस्याङ्घ्रातः पौनर्भवः । अतएवाक्षतायां क्षतायां वा जात इत्युक्तम् । मनुः । या तु पत्या परित्यक्ता विधवा वा स्त्रियेच्छया । उत्पादयेत्युनर्भूत्वा स पौनर्भव उच्यते ॥ कात्यायनः । स्त्रीवं विहाय पतितं या पुनर्लभते पतिम् । तस्याभ्यौनर्भवे जातो व्यक्तमुत्पादकस्य सः ॥ वशिष्ठविष्णू । पौनर्भवश्चतुर्थ इति । चतुर्थत्वन्तदनुक्रमापेक्षया ।

8. माता भर्त्राज्ञया पिता वा यमन्यसौ दद्यात् तस्य दत्तकः पुत्रः । तथा च मनुः । माता पिता वा दद्यातां यमद्भिः पुत्रमापदि । सदृशं प्रीतिसंयुक्तं स ज्ञेयो दत्तिमः सुतः ॥ आपदीत्युक्तेरेनापदि दातुः प्रत्यवायः । मातापितरौ प्रत्येकं मिलितौ वा । अङ्घ्रिरिति दानप्रतियहप्रकारोपपन्नञ्चम् । सदृशं सर्वथै । प्रीतिसंयुक्तमिति क्रियाविशेषञ्चम् ।

एकः पुत्रश्च न देयो न प्रतियाह्वः । तथा च वशिष्ठः । शुक्रशोषितसम्भवः पुरुषो माता पित्रनिमित्तकस्तस्य प्रदानविक्रयपरित्यागेषु मातापितरौ प्रभवतः । नत्वेकं पुत्रन्दद्यात्प्रतिगृहीयाद्वा । स हि सन्तानाय पूर्वेषाम् तु स्त्री पुत्रं दद्यात्प्रतिगृहीयादान्यत्रानुष्ठानाङ्गसुरिति ॥

अत्र भर्त्रनुष्ठां विना स्त्रियाः पुत्रप्रतियहनिषेधाददत्तानुज्ञे भर्तरि गृहे विधवाया कृतः पुत्रोदत्तको न भवतीत्याहुस्तत्र अपुत्रस्य गत्यभावात्पुत्रकारणस्यावश्यकत्व-अवस्थाच्छास्त्रमूलकतदनुज्ञायास्तत्राप्यक्षतेः । न चैवमनुष्ठानादन्यत्रेति अर्थम् अथार्थाभावाच्छास्त्रेयानुमतेः सर्वत्रावश्यकत्वादिति वाच्यम् । सुमुक्तोः पत्यन्तरं पुत्रवतोवानुज्ञाया असम्भवाद्भार्या यदि स्वपुत्रार्थमेव तं प्रतिगृहीतुमिच्छति तदा तां प्रतिवेधति । सर्वसां एकपत्नीगमेका चेत्पुत्रिणी भवेत् । सर्वसास्तेन पुत्रेण प्राह पुत्रवतीर्नुरिति पुत्रकार्यत्राज्ञादेः सपत्नीपुत्रेण सिद्धेर्भर्त्रनुष्ठां विना तादृशा पुत्रो न कार्यः । उभयोरपि तत्र कार्यस्य तेन निव्यप्तेः । भर्तृर्द्धिं स शौरस एव मुख्यः तस्या अपि दत्तवद्गौत्र इति तादृशा भर्त्रनुमतिमन्तरेष्वेतरो न प्रतियाह्व इति तात्पर्यार्थः । वस्तुतस्तु । आहूयामेकजातानामेकक्षेत्रं पुत्रवान् भवेत् । सर्वे ते तेन पुत्रेण पुत्रिणो मनुव्रवीदिति वचनवदेतस्यापि आह्वपुत्रस्य गौत्रदत्तकपुत्रत्वादिसम्भवेऽप्युः पुत्रप्रतिनिधिर्न कार्य इत्यर्थकतया मिताक्षराकृतचित्रिकादौ व्याख्या-

11. दत्तात्मा तु स्वयन्दत्तः स्वयमेव स्वात्मानमन्यस्मै दत्तवांस्तवाह्मभ्युजो भवा-
मीति स्वयमुपगतो मातापितृविहीनस्ताभ्यां त्वत्तो वा सर्वार्थोऽपतितः स उच्यते । तथा
च मनुः । मातापितृविहीनो यत्स्थितो वा स्यादकारणात् । आत्मानं स्वर्गयेद्यस्मै
स्वयन्दत्तस्तु स स्मृत इति ॥ अकारणात्पातित्वादिकारणमन्तरेणैव दुर्भिन्नादौ पोष-
णाद्यसामर्थ्यादिना मातापितृभ्यान्त्यक्तः स्वतन्त्र इत्यर्थः ।

12. यस्तु गर्भे स्थितोऽपरिणीतावस्थायां सर्वार्थोऽज्जाराज्जातो गर्भिण्यान्तस्यां
परिणीयमानायां विद्वन् प्राप्नोति विद्वन्नाम इत्यस्य निष्ठान्तं रूपम् । नृदविदेत्यादिसूत्रेण
निष्ठासम्बन्धितकारस्य नकारः । स सहेष्टज उच्यते । स वेदुः पुत्रः । तथा च
मनुः । या गर्भिणी संस्क्रियते ज्ञाताऽज्ञातापि वा सती । वेदुः स गर्भो भवति
सहेष्ट इति चोच्यते ॥ विष्णुरपि । सहेष्टः सप्तमः । गर्भिणी या संस्क्रियते तस्याः
पुत्रः स तु पाण्ड्याहस्येति । सप्तम इति तदीयपाठक्रमापेक्षया ।

13. उत्सृष्टो मातापितृभ्यान्त्यक्तो यो गृह्यते पुत्रार्थिना सोऽपविद्धो नाम
ग्रहीतुः पुत्रः । एतावपि सर्वार्थवेव । तथा विष्णुरपि । अपविद्धश्चेकादशः पित्रा
मात्रा च परित्यक्तः स येन गृहीतः । वशिष्ठः । अपविद्धः पञ्चमोऽयं मातापितृभ्याम-
पास्तं गृहीयात् । एकादशत्वं पञ्चमत्वं तत्तत्पाठक्रमापेक्षया ।

14. यस्तु मनुना गौशपुत्रमध्ये पारश्रवाख्यः शूद्रापुत्रः परिगणितः स वैगी-
श्वरेण सजातीयेष्वयं प्रोक्तस्तनयेषु मया विधिरित्युक्तोपसंहारव्याजेन नियमकारणा-
त्तस्य च कथञ्चिदपि सजातीयत्वासम्भवान्नोक्तः । अतएव जातोऽपीत्यादिना ग्रन्थेन स
उक्तः । द्विजातस्य शूद्रापुत्रस्यान्याभावेऽपि पितृव्यव्यवहारत्वाभावाच्च । तच्च वक्ष्यते ।
तथा च मनुः । यं ब्राह्मणस्तु शूद्रायां कामादुत्पादयेत्सुतम् । स पारश्रवेव श्रवस्तस्मात्
पारश्रवः स्मृतः इति ॥ बौधायनोऽपि । द्विजातिप्रवराश्च शूद्रायां जातः कामात्पारश्रव
इति ।

15. तत्रौरसादयो गौशाः पुत्रा मुख्यस्त्वरौरसएव । तथा च मनुः । क्षेत्र-
जादीन् सुतानेतानेकादश यथोदितान् । पुत्रप्रतिनिधीनाञ्च क्रियालोपागमनीविधयः ॥
क्रियालोपात् परिचयादिक्रियालोपादिति प्रतिनिधित्वे हेतुः । स्मृतिचन्निष्क्रियाणाम् ।
कौरसाभावे तत्कर्तृकआज्ञादिक्रियालोपाद्विभक्तो मनीविधयः ऋषयः एकादश पुत्र-
प्रतिनिधीन् कर्तृव्यत्वेनाहुरिति व्याख्यातम् । दृष्टस्यतिः । पुत्रास्तयोदश प्रोक्ता
मनुना येऽनुपूर्वशः । सन्तानकारणत्वेनामौरसः पुत्रिकादयः । पुत्रप्रतिनिधी कर्तृ-
व्यत्वेनाहुरिति व्याख्यातम् । दृष्टस्यतिः । आत्वं विना यथा तैषं सद्भिः प्रतिनिधिः
स्मृतः । तथैकादश पुत्रास्तु पुत्रिकौरसयोर्विना ॥ ब्रह्मपुराणे । दत्तकश्च स्वयन्दत्तः
अजिमः क्रीतएव च । अपविद्धाश्च ये पुत्रा भरणीयाः सदैव हि । भिन्नगोत्राः पृथक्
पिच्छाः पृथग्बंशकरास्तथा । सूतके ऋतके वापि अद्याश्चैव भागिनः । अपि
वस्त्रावदादृक्षां क्षेत्रबीजवतान्तथा । शूद्रो दासः पारश्रवो विप्राणां विद्यते क्वचित् ।
राक्षां तु श्रापदग्धानां निधं जयवतान्तथा । अथ संग्रामशीलानां कदाचिद् वा

भवन्ति ते । सौरसे यदि वा पुत्रस्त्वथवा पुत्रिकासुतः । न विद्यते तत्र तेषां विज्ञेयाः क्षेत्रजादयः । एकादश पृथग्भावा वंशमात्रकरास्तु ते । आजादि दासवत्सर्वे तेषां कुर्वन्ति नित्यशः । गूढोत्पन्नश्च कानीनः सहेतुः क्षेत्रजस्तथा । पौनर्भवश्च वैश्राना राजदण्डभयादपि । वर्जिताः पञ्च धनिनां श्रेयाः सर्वे भवन्त्यपि । शूद्राणां दासकृतीनां परपिण्डोपजीविनाम् । परायत्तशरीराणाम्न कश्चित् पुत्र इत्यपि । तस्मादासस्य दास्याश्च जायते दास एव हीति ॥

16. एवमेतेषां पुत्राणां स्वरूपनिर्णय तेषान्दायग्रहणं निरूप्यते । तत्र योगीश्वरः । पिण्डदेऽंशहरत्वेण पूर्वाभावे परः परः । परःपर इति वीष्पादर्शनात् पूर्वपूर्वाभाव इत्यपि वीष्पावसेया ।

17. सौरसपौत्रिकेयसमवायेऽप्येवमौरसे सति पुत्रिकासुतस्य दायग्रहणाभावे प्रसक्ते मनुष्यपदमिति । पुत्रिकायां कृतायान्तु यदि पुत्रोऽनुजायते । समस्तत्र विभागः स्याज्ज्येष्ठता नास्ति हि स्त्रिया इति ॥ कृत्स्न्यतिरपि । एक एवौरसः पित्ये धने स्वामी प्रकीर्तितः । तत्तुल्या पुत्रिका प्रोक्ता भर्त्तया स्वपरे सुताः ॥ न च पुत्रिकाया एव प्रथमं पुत्रे जाते पश्चादौरसेत्यसौ पुत्रिकापुत्रस्य ज्येष्ठत्वादस्त्रीत्वाच्च ज्येष्ठांशभागिता भवेदिति युक्तम् । तस्य पौत्रत्वात् । तदाह मनुः । अकृता वा कृता वापि यं विन्देत्सदृशास्तुतम् । पौत्री मातामहत्वेन दद्यात् पिण्डं हरेद्गनमिति । पुत्रिका हि पुत्रस्तपुत्रो दौहित्रोऽपि पौत्रस्तद्वान् पौत्री भवति । पौत्रस्य च ज्येष्ठत्वेनांशातिरेको नैव श्रुतः । न च अस्यां यो जायते पुत्रः स मे पुत्रो भवेदिति पुत्रिकापुत्रस्यापि पुत्रत्वाभिधानात्तद्विरोध इति वाच्यम् । मनुविरोधेन तस्य गौण्यपिण्डदाहत्वनिमित्तपुत्रत्वाभिप्रायकत्वात् । पुत्रिकायाः पुमपत्यत्वाभावाद्यथा गौणं पुत्रपदप्रतिपाद्यत्वं तथा स्त्रियपुत्रिकाजन्मपुत्रस्यापि । पुंस्त्वे सत्यपि जन्मत्वाभावात् । अन्यपुंस्त्वस्यैव पुत्रपदशक्यत्वात् ।

18. तथान्येषामपि पुत्राणां पूर्वपूर्वसत्वे सर्वभागानर्हत्वमनेन प्रसक्तमपवदिति वशिष्ठः । तस्मिन्नेतिप्रतिष्ठहीत सौरस उत्पद्येत चतुर्थभागभागी स्यादत्तक इति दत्तकग्रहणं क्रीतादीनामुपपन्नत्वं पुत्रीकरणाविशेषात् । उत्पन्ने त्वौरसे पुत्रे चतुर्थीशहराः सुताः । सर्वया असवर्यास्तु ग्रासाच्छादनभाजना इति कात्यायनवचनाच्च । सर्वयाः क्षेत्रजदत्तकादयस्ते सत्वौरसे चतुर्थीशहराः । असवर्याः कानीनगूढोत्पन्नसहेतुपौनर्भवास्ते तु सत्वौरसे न चतुर्थीशहराश्चापि किन्तु ग्रासाच्छादनमात्रभागिन इत्यर्थः कात्यायनवचनस्य । अतएव विष्णुः । अप्रशस्तास्तु कानीनगूढोत्पन्नसहेतुजाः । पौनर्भवश्च नैवेति पिण्डरिक्तांशभागिन इति ॥ सौरसे सति कानीनादीनां चतुर्थीशभागित्वं प्रतिषेधति । कानीनादीनामप्यौरसाद्यभावेऽप्येव पित्यसक्तजनग्रहणम् । पूर्वाभावे परःपर इति वचनात् । यच्च मनुवचनम् । एक एवौरसः पुत्रः पित्यस्य वसुनः प्रभुः । श्रेयात्वाभावात्प्रत्यर्थं प्रदद्यात्तु प्रजीवनमिति । तदपि दत्तकादीनामौरसप्रतिभूजत्वेऽवन्तनिर्गुणत्वे च चतुर्थीशादिनिषेधपरश्रीना-

दिपरश्च । तेषां सत्थौरसे यासांश्चादनमात्रभागित्वस्योक्तात्वात् तदेकमूलकत्वकल्पनात् ।

क्षेत्रजस्य तु सत्थौरसे पञ्चमवकांशौ मनुनैवोक्तौ । षष्ठन्तु क्षेत्रजस्यांशं प्रदद्यात् पैटकाद्वनात् । सौरसे विभजन् दायं पितृं पञ्चममेव वेति ॥ प्रतिकूलत्वनिर्गुणत्व समवाये षष्ठमेकतरसङ्गावे पञ्चममिति व्यवस्था । यस्तु समयधनभोक्ता स्यादौरसेऽपि जघन्यजः । त्रिभागं क्षेत्रजोभुङ्क्ते चतुर्थं पुत्रिकासुतः ॥ इत्यादि ब्रह्मपुराणादिवचनैः समभागार्हतया मन्वादिभिरुक्तस्य पुत्रिकापुत्रस्य चतुर्थांश उक्तः पञ्चमवकांशार्हतयोक्तस्य क्षेत्रजस्य ढतीयांशोक्तः स पुत्रिकापुत्रस्यात्यन्तनिर्गुणत्वेऽसवर्णत्वे च । क्षेत्रजस्य चात्यन्तसगुणत्वानुकूल्ययोर्व्यवस्थापनीयः ।

सौरसाभावे दत्तकस्याखिलधनग्रहणार्थं पृथगारब्धं मनुना उपपन्नो गुणैः सर्वैः पुत्रो यस्य तु दत्त्रिमः । स हरेतैव तद्विषयं संप्राप्नोऽप्यन्यगोत्रतः ॥ स्वगोत्रसंप्राप्तः किमुतेति किमुत्पत्त्यर्थोऽपि शब्दः । जनकधनग्रहणञ्च तस्य प्रतिषिद्धन्तेनैव । गोत्ररिक्थे जनयितुर्न भजेदत्त्रिमः सुतः । गोत्ररिक्थानुगः पिण्डो व्यपैति ददतः स्वधेति ॥ ददतः सम्बन्धी पिण्डरुक्तोव्यपेति । स्वधा पिण्डरुप्तिहेतुरिति पिण्डविशेषणम् । गोत्ररिक्थानुग इति हेतुगर्भम् ।

दत्तकमात्रविषयकमपि सत्थौरसे चतुर्थांशहरत्वप्रतिपादकं पृथगारब्धं वशिष्ठेन । तस्मिंश्चेत्प्रतिगृहीत सौरसउत्पद्येत चतुर्थभागभागो स्यादत्तक इति । क्रोतादि-साधारण्यन्तु कात्यायनीयं प्रागेव पठितम् । तत्र ढतीयांशहरा इति कल्पतरुलिखितपाठो यदि साकारस्तर्हि दत्तकादीनामौरसापेक्षया सगुणत्वे ढतीयांशहरत्वमिति व्याख्येयः ।

मनुनैव क्षेत्रजस्यौरससमभागभागित्वमप्युक्तम् । यवीयान् ज्येष्ठभार्यायां पुत्रसुत्यादेर्यदि । समस्तत्र विभागः स्यादिति धर्मो व्यवस्थितः । उपसर्जनं प्रधानस्य धर्मतो नोपपद्यते । पिता प्रधानं प्रजने तस्माद्वर्मेव तन्मजेत् । धनं यो विभ्रयाद्भ्रातुर्मतस्य स्त्रियमेव वा । सोऽपत्यं भ्रातुस्तथाय दद्यात्तस्यैव तद्वनम् । यदेकरिक्थिनौ स्यातामौरसक्षेत्रजौ सुतौ । यस्य यत्पैटकं रिक्थं स तद्गृहीत नेतरः ॥ यद्यप्यौरसप्रक्रमात्समभागभागित्वं क्षेत्रजस्य तन्निरूपितमेवोक्तमित्याभाति । तथापि वाक्यविरोधे प्रक्रमस्य बाधत्वाद्दीजिसमभागित्वपरन्तदिति बोध्यम् । अतएवात्तरवचने पितुर्वीजिनः प्राधान्यमुपन्यस्यति । सोऽपत्यं भ्रातुस्तथाद्येत्यनेनापि यस्य क्षेत्रजस्तदीयन्वनन्तस्मै दद्यादिति आहस्यानीयत्वात्तस्य स्वसमभागितां प्रतिपादयति ।

एवमन्यान्यपुत्रावचभागान् क्षेत्रजादीनां प्रतिपादयन्तु बृहस्पत्यादिवचनानि कथञ्चिद्व्यवस्थापनीयानि । तत्र बृहस्पतिः । क्षेत्रजाद्याः सुताश्चान्ये पञ्च षट् समभागिनः । हारीतः । विमजिथ्यमात्र एकविंशद्भागनीनाय दद्यात् । विंशत्यनैर्भवाय । श्वोनविंशं द्वासुध्याययाय । अष्टदशं क्षेत्रजाय । सप्तदशं पुत्रिकापुत्राय । इतरानौरसाय पुत्राय दद्युः । ब्रह्मपुराणे । समयधनभोक्ता स्यादौरसेऽपि जघन्यजः । त्रिभागं क्षेत्रजो भुङ्क्ते चतुर्थं पुत्रिकासुतः । दत्त्रिमः पञ्चमभागं षड्भागकृतसम्भवः ।

समांशस्वापविद्धस्तु कानीनश्चाष्टमांशकं । नवभागं सहोऽष्टञ्च क्रीतो दशममनुते ।
 पौनर्भवस्तु परतो द्वादशं स्वयमागतः । त्रयोदशमभागान्तु श्रौत्रो भुङ्क्ते पितुर्जनात् ।
 तद्गोत्रजो वा धर्मिको ब्रह्मचार्य्यथवा पुनः ॥ अथौरसे सतीति सर्वत्र ज्ञेयः ।
 पूर्वाभावे परःपर इति वचनात् । ब्रह्मपुराणीयस्य समग्रोत्पादिप्रथमस्रोक्तस्य पूर्वमेव
 विषयव्यवस्थोक्ता । अन्येषामपि गुणतारतम्येन देशाचारानुसारेण वा यथायथं व्यवस्था
 कृत्वा । षट्भागं षष्ठ्यभागम् । नवभागं नवमं भागमित्यर्थः । अन्यार्थासङ्गतेः प्रक्रम-
 मङ्गप्रसङ्गाच्च । परतोदशमात्परमेकादशम् । त्रयोदशमेत्याधम् । श्रौत्रः श्रूत्रापुत्रः ।

19. यदपि मनुना पुत्राणां षट्कद्वयमुक्ता पूर्वषट्कस्य दायादबान्धवत्वम्
 उत्तरषट्कस्य चादायादबान्धवत्वमुक्तम् । औरसः क्षेत्रजश्चैव दत्तः कृत्रिम एव च ।
 गूढोत्पन्नोऽपविद्धश्च दायादा बान्धवाश्च षट् । कानीनश्च सहोऽष्टञ्च क्रीतः पौनर्भवस्तथा ।
 स्वयंदत्तश्च श्रौत्रश्च षड्दायादबान्धवा इति ॥ तदपि स्वपितृसपिण्डसमानोदकानां
 समिहितरिक्थहरान्तराभावे पूर्वषट्कस्य तत्रिक्थहरत्वमुत्तरषट्कस्य तु तन्नास्ति ।
 पितृषट्कथहरत्वन्तु सर्वेषामपि पूर्वपूर्वाभावे समानमेवेति तद्दायादादायादत्वविभागो
 नोपपद्यते । पूर्वाभावे परःपर इति वचनात् । एकएवौरसः पुत्रः पित्र्यस्य वसुनः
 प्रधुरित्युक्ता न भ्रातरौ न पितरः पुत्रारिक्थहराः पितुरिति वचनस्य गौण-
 पुत्राणामेव सर्वेषाम्पितृरिक्थहारित्वप्रतिपादनपरत्वाच्च । दायादशब्दस्य दायादा-
 नपि दापयेदित्यादौ पुत्रव्यतिरिक्तरिक्थहारिव्येव प्रचुरप्रयोगाच्च । बान्धवत्वं सपिण्ड-
 समानगोत्रत्वाभ्यामुदकदानादिकार्य्यकरत्वं षट्कद्वयस्यापि समानमेवेत्येतदर्थकम् ।

यत्तु हारीतवचनं । बन्धुबन्धुदायादाः साध्व्यां स्वयमुत्पादितः क्षेत्रजः पौनर्भवः
 कानीनः । पुत्रिकापुत्रो गूढोत्पन्नो ऋष्ट इति बन्धुदायादाः । दत्तः क्रीतोऽपविद्धः
 सहोऽष्टः स्वयमुपगतः सहसादृष्टोऽथैवबन्धुदायादा इति । साध्व्यां स्वयमुत्पादित औरसं
 इत्यर्थः । सहसा दृष्टो यो मातापित्रादिविहीनोऽकस्मादृष्टः केनचित् परितोष्य मम
 त्वं पुत्रोभवेत्युक्तस्तथेति प्रतिपद्यते । कृत्रिम इति यावत् ।

तत्र मनुविरोधः स्पष्टः । तेन कानीनपौनर्भवयोरबन्धुदायादमध्ये परिगणनात् ।
 हारीतेन बन्धुदायादमध्ये दत्तकृत्रिमापविद्धेषु च व्यत्ययात् । तस्मादेवं सर्वादिभेदेन
 देशाचारभेदेन वा विरोधः परिहरणीयः ।

बौधायनस्तु मन्वन्सारेणैवाह । औरसं पुत्रिकापुत्रं क्षेत्रजन्दत्तकृत्रिमौ ।
 गूढजं वापविद्धञ्च ऋक्थभागः प्रचक्षते ॥ कानीनश्च सहोऽष्टञ्च क्रीतमपौनर्भवस्तथा ।
 स्वयन्दत्तन्निषादञ्च गोत्रभाजः प्रचक्षते इति ॥

औरसपुत्रिकापुत्रक्षेत्रजकानीनगूढोत्पन्नापविद्धसहोऽष्टपौनर्भवदत्तकस्वयमुपगत-
 कृतकक्रीतानभिधायाह देवणः । एते द्वादश पुत्रास्तु सन्तत्यर्थमुदाहृताः । आत्मजाः
 परजाश्चैव जन्वा यादृष्टिकास्तथा । तेषां षड् बन्धुदायादाः पूर्वेष्वेव पितुरेव षट् ।
 विशेषश्चापि पुत्राणामानुपूर्व्या विधिस्थिते । सर्वे ह्यनौरसस्यैते पुत्रा दायहराः स्मृताः ॥
 औरसे पुनरुपगते तेषु व्यैषम्यं विद्यते । तेषां सर्वा ये पुत्रास्ते तृतीर्वांशभागिनः ।

हीनास्तमुपजीवेयु यासांश्चादनसंभृताः । आत्मजत्वादिकं परिगृह्यतेषु यथावयं
सकृन्नेव । अगौरसस्य न विद्यते सौरसो यस्य तस्येति वज्रग्रीहिः ।

गारदोऽपि । सौरसः क्षेत्रजश्चैव पुत्रिणापुत्रयवच । कानीनश्च सङ्घोऽप्य
मूढोत्पन्नस्तथैव च । पौनर्भवेऽप्यविज्ज्ञ दत्तः क्रीतः कृतस्तथा । स्वयच्छोपगतः पुत्रा
दादश्नैते प्रक्षीर्तिताः । एषां बहुबन्धुदावादाः बहुदावादबान्धवाः । पूर्वः पूर्वः स्मृतः
अग्रेष्ठो जघन्यो योऽन्नगुत्तरः । क्रमादेते प्रवर्तन्ते मृते पितरि तज्जने । व्यायसो
व्यायसोऽभावे जघन्यस्तदबाधुयात् ।

मनुः । अयसः अयसोऽभावे पापीयान् रिक्त्वमर्हति । बहुवच्चेत् सदृशाः सर्वे
रिक्त्वस्य भागिनः ।

दृहस्पतिः । दत्तोऽप्यविज्ज्ञः क्रीतश्च कृतः प्रौढस्तथैवच । जातिमुद्गममध्यमास्ते
सर्वे रिक्त्वसुताः स्मृताः । क्षेत्रजो गर्हितः सङ्क्रिस्ताया पौनर्भवः सुतः । कानीनश्च
सङ्घोऽप्य मूढोत्पन्नस्तथैव च ।

हारीतः । शूद्रापुत्राः स्वयंदत्ता ये चैते क्रीतकाः सुताः । सर्वे ते गोपिकाः
प्रोक्ताः काण्डपृष्ठा न संशयः । स्वकुलं पृष्ठतः कृत्वा येषु परकुलं व्रजेत् । तेन दुश्चरि-
तेनासौ काण्डपृष्ठो न संशयः ।

यमः । आपदतो क्षुपगतो यश्च स्यादैव्यावीसुतः । सर्वे ते मनुजा प्रोक्ताः
काण्डपृष्ठा स्वयस्तथा । कुलं काण्डमिति स्वातं यस्मात् पूर्व्यादि ते जङ्गः । तत्र
व्येकतरो यः स्यात्तं वै काण्डे विनिर्दिशेत् । स्वकुलं पृष्ठतः कृत्वा येषु परकुलं व्रजेत् ।
तेन दुश्चरितेनासौ काण्डपृष्ठ इति स्मृतः । वैव्यावी शूद्रेति कथ्यतरौ ।

20. उक्तोपसंहारमुखेन नियममाज्ञाप्योगीश्वरः । सजातीयेष्वयमोक्तस्त-
नयेषु मया विधिः । अयं पूर्व्याभावे परःपरोधनभागित्वुक्तो यो मया विधिः स
सजातीयेष्वुत्पादकसजातीयेष्वेव क्षेत्रजादिषु क्षेत्रे न विजातीयेषु तत्र कानीनमूढोत्प-
न्नसङ्घोऽपौनर्भवानां सर्वव्यत्यन्नकदादेव न स्वल्पेन तेषु वर्जजातिनक्षत्रात् वर्जजा-
तिविवेकमभिधाय विज्ञात्वेवविधिः स्मृत इति योगीश्वरैश्वर्याभिधानात् । अगुलोमजानां
मूर्खाभिविह्वलादीनामौरवेक्षेवान्तर्भावाच्चतुस्त्रिंशोक्तभागा इत्यादिना भागकृतिवत्ता ।
तेन तेषामप्यभावे क्षेत्रजादयः पितृश्रद्धाहारिणः ।

21. शूद्रापुत्रस्य तौरसत्वेऽपि न कृत्यापित्यधनभागित्वमन्याभावेऽप्यस्ति ।
यथाह मनुः । यद्यपि स्यात्तु सत्पुत्रो यद्यपुत्रोऽपि वा भवेत् । नाधिकं दशमादद्यात् शूद्रा-
पुत्राव धर्म्मतः । यदि सत्पुत्रो विद्यमानः सर्वव्यापुत्रो यदि वाऽपुत्रोऽविद्यमानः सर्वव्या-
पुत्रो भवेत्तस्मिन्मृते क्षेत्रजादिः पुत्रोऽन्यो वा रिक्त्वहारी शूद्रापुत्राय तज्जनादशमांशा-
दधिकं न दद्यात् । अस्मादेव वचनात्सर्वव्यापुत्राभावे क्षत्रियवैश्यापुत्रयोः सप्तषविप्र-
थितधनग्रह्यं गम्यते । यत्तु प्राक् चतुस्त्रिंशोक्तभागा इत्यादिना शूद्रापुत्रस्यैकभाग-
भागित्वं योगीश्वरादिभिर्वक्तव्यमिति सङ्गतशूद्रापुत्रविषयं वेदितव्यमन्यथा मानववि-
रोधात् । ब्राह्मणक्षत्रियविश्रामिति मनुश्चननु प्रागेव आस्तातम् ।

22. श्रद्धधनविभागे विशेषमाह याज्ञवल्क्यः । जातोऽपि दास्यां श्रद्धेन कामतोऽंशहरो भवेत् । मृते पितरि कुर्युस्तं आतरस्त्वर्जभागिनम् । अन्धाह्नो हरेत्सर्वं दुहितृणां सुताद्वेति । श्रद्धेन दास्यामुत्पन्नः पुत्रः कामतः पितुरिच्छया भागं जभते । पितुस्त्वर्जन्तु आतरः परिणीताश्रमापुत्रास्तन्दासीपुत्रं स्वभागार्जभागिनं कुर्युः । अत्र वज्रवचनात्सर्वं स्वभागार्जार्जन्द्युरिति न भमितव्यम् । तथा सति वज्रान्धाह्नस्य ततोऽप्यतिवज्रधनत्वापत्तेरवस्था स्यात् । किन्वेकपुत्रस्य यावान् भागस्तत्तदार्जभागं श्रमापुत्रा जभन्ते अथमिप्रायेण जात्यमिप्रायेण च वज्रवचनैकवचने । परिणीतश्रमापुत्रतत्पुत्राद्यभावे तु दासीपुत्रोऽपि कृत्वां श्रमस्य पितुर्जंनं जमत इत्यर्थाद्भव्यते ।

23. श्रद्धयद्वयाद् द्विजातिभ्यो दास्यामुत्पन्नः पित्रिच्छयाप्यंशमर्जभागं वा तदूर्जं जभते कृत्वातज्जनयद्वयं दूरापास्तमेव किन्वप्रतिपूजयेज्जीवनमात्रमिति प्रतीयते ।

CHAPTER III.

PART I.

1. मुख्यगौश्रमाभावे मृतपतितपरिव्राजकादिधनग्रहणाधिकारिण उच्यन्ते । तत्र योगीश्वरः । पत्नी दुहितरश्चैव पितरौ आतरस्तथा । तत्सुता गोचजा बन्धुः शिष्यः सत्रह्यचारिणः । यन्ममभावे पूर्वस्य धनभागुत्तरोत्तरः । स्वर्थातस्य ह्यपुत्रस्य सर्व्ववर्गेष्वयं विधिरिति । अपुत्रस्य पूर्व्वोक्तद्वादशविधपुत्ररहितस्य स्वर्थातस्य मृतस्य पत्न्यादयः पूर्व्वपूर्व्वभावे पाठक्रमेणोत्तरोत्तरन्वनं गृहीयुरित्यर्थः । अयं विधिः सर्व्वेषु मूर्द्धाभिविक्तावसिक्ताद्यनुशोमजप्रतिसोमजादिषु वर्गेषु च ब्राह्मणादिषु वेदितव्यमित्यर्थः ।

2. तत्र प्रथमं पत्नी धनहारिणी । पत्नीशब्देनैव विवाहसंज्ञता । प्रत्युर्गो यज्ञसंयोगे इति पाणिनिस्त्वचात् । जात्यमिप्रायेण चैकवचनं तेन वज्रवचनेत्यत्र यज्ञस्य तदा सर्व्वाः सजातीया विजातीयाः क्रमेण वधाययं भर्तृधनं विभज्य गृहीयुः । पत्नीशब्दादासुरादिविवाहोदाया ग्रहणं धर्मविवाहोदापत्त्यन्तरसङ्कावे नास्तीति गम्यते । तथा स स्मृतिः । क्रयणीता तु या नारी न सा पत्नी विधीयते । न सा दैवे न सा पित्रे दासीनाह्नवयो विदुरिति । अत्र च दासीत्वकथनमदृष्टार्थ-कर्मसु सहाधिकाराभावाभिप्रायेण न तु दासीवद्व्यभिप्रायेण । विवाहितात्वेन परदारत्वबाधात् अतएव मनुर्धर्मधर्मविवाहानुक्तं सन्तानगतावेव मुखदोषा-वाह । अविधितैः स्त्रीविवाहैरभिप्राया भवति त्रयः । निधितैर्निधिताश्रमान्त-

स्नाग्निश्चान्विवर्जयेदिति ॥ प्रजाया निन्दितत्वमपि सदृत्तस्वभावतामावो न तु वर्जजा-
त्यभावः । परिश्लेत्तुः परिशीतायामुत्पन्नत्वमात्रस्य वर्जजातिव्यञ्जकत्वात् । विनाशेव
विधिः स्मृत इत्युक्तेः । अतएव न सा दैवे न सा पितृ इति सहाधिकारएव
प्रतिषिद्धः ।

तथा च पितृादिकर्माहतापि पतिदायहरत्वप्रयोजिकेति पत्नीपदेन ज्ञापि-
तम् । अतएव श्रौतस्मार्त्तसहाधिकारिणी पतिव्रतैव भर्तृधनभागिनीत्याह प्रजा-
पतिः । पूर्वं मृता त्वमिहोत्रं मृते भर्तृरिति तद्धनम् । जमेत् पतिव्रता नारी धर्मस्य
सनातनः ॥ वृद्धमनुरपि । अपुत्राश्रयनम्भर्तुः पालयन्ती व्रते स्थिता । पत्न्येव दद्या-
त्तत्पिण्डं ह्यत्स्वमंशं जमेत चेति ॥ अत्रोत्तरार्द्धोक्तपाठक्रमस्यार्थक्रमेण वाधात् प्रथमं
ह्यत्स्वमंशं जमते पश्चात् पिण्डं दद्यादिति स्मृतिचन्द्रिकाकारेणोक्तं । तज्ज्ञेयम् । क्रमे
तात्पर्याभावात् । उभयाधिकारप्रतिपादनमात्रपरत्वाद्वचनस्य । अन्यथा यावदंशलाभं
भर्त्वन्येष्टिविलम्बोऽपि प्रसज्येत । सचानेकस्मृतिनिषिद्धः । अट्टककल्पनापत्तिश्च ।
पत्न्येवेत्येवकारेणापुत्रस्यान्यकर्मण्यप्यपुत्रपुत्रवत् पत्नीत्यादिवचनादुभयात्रादिसत्त्वेऽपि
सैवाधिकारिणीति दर्शितम् ।

अयमेवार्थः प्रपञ्चितः प्रजापतिना । जङ्गमं श्यावरं ह्येव कुप्यन्धान्यं रसाम्बरम् ।
आदाय दापयेच्छाजं मासघाण्मासिकादिकम् । पिष्टव्यगुरुदौहित्रान् भर्तुः सखीयमातु-
जान् । पूजयेत्कथपूजाभ्यां वृद्धांश्चाप्यतिथीन् स्त्रियः ॥ कुप्यन्मपुसीसादि । कथमपित्र्यं
सङ्गृह्यितमन्नादि । पूर्वोक्तादि कर्माङ्गदक्षिणादि । एतदुक्तम्भवति । श्यावरेणापि
सहितं सर्वं भर्तृधनमधिगत्य धनसार्थं स्वधिकारिकं पत्युरात्मनश्च श्रेयःसाधनकर्म
पतिपत्नीयपुरस्कारेण पत्न्या कार्यमिति ।

एवं वर्त्तमानाया ये पीडाकारिणस्ते राज्ञा चौरवद्दृष्टा इत्याह स एव ।
सपिण्या बान्धवा ये तु तस्याः स्युः परिपश्यिनः । हिंस्युर्जनानि तान् राजा चौरदखेन
शासयेत् ॥

स्मृतिचन्द्रिकायां वार्हस्पत्यत्वेन पत्न्याः श्यावरयज्ञनिषेधकम् । यदिभक्तो
धनद्विष्टिदाध्यादिविविधं स्मृतम् । तज्ज्ञाया श्यावरं मुक्ता जमते मृतभर्तृकेति ॥
वचनं लिखितम् । जङ्गमं श्यावरमित्यादि प्रजापतिवचनविरोधपरिहाराय वृत्तवि-
हीनपत्नीपरत्वमविभक्तपथंशविषयत्वं वान्योक्तम् । वृत्तस्यापि ह्यतेऽप्यंशे न स्त्री
श्यावरमर्हतीति । तच्छेषविरोधेनापास्य दुहितृरहितपत्नीविषयत्वेन व्यवस्थापितम् ।

तत्र मदनरत्नकारेण मितार्त्तराकष्यतवह्मलायुधादिसर्वग्रन्थान्तरेष्वलिखनाभि-
मूलात्मस्य । जङ्गमं श्यावरमिति प्राजापत्यस्य च सर्वत्र लिखनात्ममूलात्ममिति
दूषणमुक्ता तदुक्तव्यवस्थायाश्च श्रोत्रेक्षामात्रकष्यितत्वेनायुक्तत्वमभिधाय समूलात्वेऽपि
श्यावरादिसमग्रधनयज्ञं ब्राह्मणदिविवाहोऽन्तविषयन्तद्वचनेषु पत्नीशब्दप्रयोगात् ।
श्यावरयज्ञप्रतिषेधकवृत्तस्यतिवचनन्तु जायास्त्रीशब्दमात्रप्रयोगादासुरादिविवाहो-
ऽन्तविषयमिति अर्थं व्यवस्था कृता ।

आसुरादिविवाहीनाः । पत्नीशब्देनाग्रहणात्त्यादिशब्देऽपेतवचनानामपि तदेकमूक्ततया तत्परत्वात् स्मृतिचन्द्रिकायामेव निरुक्ता । यत् तदुक्तव्यवस्थायामौत्प्रेक्षिकत्वमुक्तं तदपि न । दुहितृसत्त्वे तत्सन्तानद्वारेण स्थावरस्थोपभोगधनस्थानुपकारयोः सम्भवात् स्थावरमपि ग्राह्यं तद्विज्ञेयत्वात् तदभावात् तदग्रहणमिति तथापि वीजसम्भवात् । अतएव पितुरपि स्थावरे स्थाजितेऽपि पुत्रानुमतिसन्तरेणानधिकारो प्रागुक्तः ।

3. यत्तु गृहीतधनायाः परन्त्यास्तद्धनेन जीवनमाचरन्तानाधीकारविक्रयेषु तु नाधिकार इति । मृते भर्तारि भर्तृशं कमेत कुलपानिका । यावज्जीवन् हि स्वाभ्यान्नाधमनविक्रय इति कात्यायनवचनात्प्रतीयते । तदपि दृष्टार्थनटनर्त्तादिदानास्वातन्त्र्यपरम् । अदृष्टार्थदाने तदुपयोगिनोराधीकारविक्रयेऽथ तेनैवाधिकाराभिधानात् । व्रतोपवासनिरता ब्रह्मचर्ये अवस्थिता । दमदानरता निवृत्तपुत्रापि दिवं व्रजेदिति । दिवं व्रजेदित्यनेन कान्येऽपि दानादौ तस्या अधिकारः प्रतीयते किमुत नित्ये नैमित्तिके च । जङ्गमं स्थावरं जेमेत्यादिपूर्वोदाहृतप्रजापतिवचनाच्च । तत्रापि पूर्वग्रहणात्कान्येष्वधिकार आयातोति स्मृतिचन्द्रिकाशारादयः ।

यथापरमपि कात्यायनवचनमेव । अपुत्रा श्रयनम्भर्तुः पातयन्ती गुरौ स्थिता । सुस्तीतामरबात्क्षान्ता दायदा ऊर्ध्वमाश्रयुरिति ॥

तत्र स्मृतिचन्द्रिकाकार आह । क्षान्ता दायदाकारितधनविनियोगप्रतिबन्धं सञ्चमाना सत्यामरबाद्गुप्तीतेत्यर्थः । इदञ्च रक्षणाभरणाद्यसमर्थेषु कार्यान्तरव्यग्रेषु अमुरादिषु पत्न्या यत् स्वयमेव स्वजीवनार्थमुपात्तमविभक्तं तद्विषयम् । विभक्तव्यविषयत्वे मन्वादिपरिनिष्ठितार्थवाधापत्तेरिति ।

पौरस्थान्तु गुरौ अमुरादिसमीपे स्थिता भर्तृधनं सुस्तीतैव । न तु स्त्रीधनव्ययेच्छ्रद्धानाधानविक्रयादि कुर्वीति । तस्या ऊर्ध्वं दायदा दुहित्रादयस्तदनाधिकारिणो गृहीयुर्न तु क्षातयः । तेषां दुहित्रादिभ्यो जघन्यत्वात् तद्वाधकत्वानुपपत्तेः । पत्नी हि तेषां बाधिका । तदधिकारप्रागभावप्रध्वंसयोरविशेषाद्वाधकाभावस्य तद्वाधानुपपत्तेः । नापि स्त्रीधनाधिकारिणो गृहीयुः । कात्यायनवचनेनैव स्त्रीधनाधिकारिणां वचनान्तरैरुक्तत्वात् पौनरुक्त्यापत्तेः । अतः पत्नी दुहितरश्चेत्यादिना ये पूर्वपूर्वस्थाभावे परभूता अपुत्रासंस्कृतिविभक्तमृतधनाधिकारिणो निर्दिष्टास्ते यथा पत्न्यधिकारप्रागभावे गृहीयुस्तथा पत्न्या जाताधिकारायाः प्रध्वंसेऽपि भोगावशिष्टं गृहीयुः । तदानीं दुहित्रादीनामेवान्यापेक्षया मृतोपकारकत्वात् युक्तस्तदधिकारः । दानधर्मेषु महाभारतवचनमप्येतदुपोद्बलकम् । स्त्रीणां संप्रतिदायस्तु उपभोगप्रकाः स्मृतः । नापहारं स्त्रियः कुर्युः पतिवित्तात्कथञ्चनेति ॥ उपभोगोऽपि न सृष्ट्यावस्थादिना । किन्तु पत्युपकाराय देहधारणमात्रोपयोग्युपभोगानुज्ञातम् । यवश्च दृष्ट्यतिना पिबत्यगुददौहित्रानिवादिना पिबत्यपदेन भर्तुः सपिण्डोपपन्नबाहौहित्रपदेन तदुहितसन्तानोपपन्नबाह्मातुलसखीयपदाभ्यान्मातृकुलोपपन्नबाह्व्येव दार्यानु-

रूपं भर्तुः आद्याद्यौर्द्धदेहिभोपकारकं दद्यात् । न तु खपितकुलसम्बन्धिभ्यः । तदनुमत्या तु तेभ्योऽपि । तथा च नारदः । मृते भर्तव्यपुत्राया पतिपक्षः प्रभुः स्त्रियाः । विनियोगेषु रक्षासु भरखेषु स ईश्वरः । परिच्छीये पतिकुले निर्मनुष्ये निराश्रये । तत्पिण्डेषु चासत्सु पिण्डपक्षः प्रभुः स्त्रियाः । इति सम्मुखमेव वचनार्थमादाय नाख्येव स्त्रिया भर्तृरिष्ये दानविक्रयाद्यधिकार इत्याहुः ।

तत्रेदं वाच्यम् । जित्तस्य तथा मृतेऽपि दानादौ तत्स्वरूपानिष्पत्तिरेव । न तावदेवं युक्तम् । मन्वादिवचनैः सकलभर्तृधनग्रहणे तस्या उक्ते सति तस्यास्तत्र स्वत्वे दानादिस्वरूपानिष्पत्तेर्बाधितत्वात् । अतएव जीमूतवाहनेनैव स्यावरस्य समस्तस्य । विभक्ता वाऽविभक्ता वा । स्यावरं द्विपदस्यैवेत्यादीनि स्यावरविषयाणि दानादिनिषेधवचनान्युपन्यस्याधर्मभांगिताच्चापनार्थमेतानि दुर्हन्तं पुरुषं प्रति कुटुम्बदुःखदानार्थमेव दानक्रियादिप्रवृत्तं प्रतिषेधकानि न तु दानादिस्वरूपानिष्पत्तिप्रतिपादकानि । यद्येकविनियोगार्हत्वजक्ष्यस्वत्वस्य द्रव्यान्तरइव स्यावरेऽप्यविशेषाद्वचनश्रुतेनापि वस्तुनेऽन्यथाकारणाशक्त्या तत्प्रतिपादनानुपपत्तेरिति निरूपितम् । तदुक्तरीत्यात्रापि दुर्हन्ततया दायददुःखदानार्थमेव भर्तृरिष्ये दानादिप्रवृत्ताया अस्तु प्रतिषेधातिशमादधर्मः । धर्मार्थान्नानप्रवृत्तायाः स्वजीवनाद्यर्थं विक्रयाधाने कुर्वन्त्याश्च नाख्येवादधर्मोऽपि । न च सुस्त्रीतैवेति नियमाद्वयादा ऊर्द्धमाप्नुयुत्तिभिधानाश्च दानाद्यनधिकार एव तस्या अविभक्तधनइव तत्रेति वाच्यम् । साधारणस्वत्वाश्रयाविभक्तधनेनासाधारणस्वत्वाश्रयस्यास्य वैधन्यात् । न च स्वभोगस्य प्राप्तत्वेनाविधेयत्वादानादिप्रतिषेधार्थमेव विधिस्तथा चानधिकारस्तत्रागत एवेति वाच्यम् । वस्तुन्यथाकारणाशक्तेर्नियमस्य दद्यादानादिना द्रव्यनाशनिवृत्त्यर्थतयैवोपपत्तेरवश्यवाच्यत्वात् । अन्यथाऽनधिकारे दमदानरता पूजयेत्कथ्यपूर्त्ताभ्यामित्यनेन दानविधिना विरोधोऽपरिहार्यः । यच्च दायदाः पत्न्यान्तराधिकारिणः पत्नी दुहितर इत्यत्र निर्दिष्टास्ते ऋद्धीयुः प्रागभावप्रध्वंसयोः प्रतिबन्धकपत्न्यभावत्वस्याविशेषात्तदधिकारोद्भवादित्युक्तान्तदतिस्थवीयः । दायदप्रदेन स्त्रीधनाधिकारिरग्रहणे यथा वचनान्तरोक्तत्वात् पौनरुक्तिः तथा तेषामपि कात्यायनेन वचनान्तरोक्तत्वात्पौनरुक्त्यविशेषात् ।

वस्तुतस्तु जातस्वत्वे स्वामिनि मृते तत्प्रत्यासन्नानामेव तद्धनग्रहणमुचितम् । पत्न्यादिशब्दानां सम्बन्धशब्दत्वेन द्रव्यस्वामित्वे पत्न्या उपजाते पूर्वस्वामिदुहित्रादीनाङ्गः प्रसङ्गः । तेन यद्यपि पूर्वाभावः प्रागभावः प्रध्वंसस्वत्वात्ताभावश्च प्रतिबन्धकसंसर्गाभाव उभयाभावश्च तुल्यस्तथापि यो द्रव्यस्वामी तस्मिन् मृते तत्सम्बन्धि पत्न्यादिकमपुत्रस्य तस्य धनं जमेतेत्येव वाक्यार्थः । अन्यथा दुहित्रादिभिरपुत्रपिण्डधने जम्बे तन्मरणे तत्सन्तत्यतिजङ्गनेन तद्धनं पूर्वस्वामिनः पितु र्ये पित्रादयस्तएव जमेरन्त्रिति महत्त्वव्यवस्था प्रसज्येत । तस्माद्भर्तृरिष्यं पत्न्या जम्बन्तास्यां मृतायां तद्भोगावशिष्टं मातुर्दुहितर इत्यादि वचनादुहित्रादियाद्यत्वेन प्रसक्तं दायदा ऊर्द्धमाप्नुयुत्तिनेनापोद्यते । अथ च वचनार्थः । दायदा इत्यत्र नाख्येवपेक्षायां श्रयनान्वितभर्तु-

रिखेवोपस्थितत्वादनुवच्यते । तथा चैवं वचनव्यक्तिः तस्या ऊर्ध्वम्भर्तुर्दायादा अविभक्त-
तदनाधिकारिणो विभक्तभ्रातृधनमपि तत्पत्नीभोगावशितं गृह्णीयुर्न पत्नीरिवद्वहारा
दुहितृादय इति शब्दापूर्वार्थत्वात्तुर्ध्वचरत्वात्तार्थवत्त्वं भवति अन्यमते वचनान्तरो-
क्तार्थानुवादमाहमनर्थकं स्यात् ।

तस्माददृष्टार्थे दाने दृष्टादृष्टावश्यकार्यार्थमाधौ विक्रये चाख्येव पत्न्याः
सकलभर्तृधनविषयोऽधिकारः नियमस्तु नटनर्त्तकादिदानानावश्यकविधिक्रयनिष्ठः
त्यर्थ इति सिद्धम् । अतएव ज्ञानोक्तम् । इयं प्राप्नुवती दद्यात्प्रत्ययकारिणी
न भवेदित्यर्थः । दानधर्मस्य महाभारतवचनम् सुतरामस्मदुक्तमेवार्थमुपोद्बलयति ।
तथा हि स्त्रियोऽस्यपतिदायः सभर्तृरिवमुपभोगयजः । उपभोगो धर्मप्रत्वात्सर्वो
भोगो नत्वसद्भोगः यजन्मयोजनं यस्य तादृशः स्मृत उक्तो मन्वादिभिः । उत्तरार्द्धे
तदेव व्यनक्ति । स्त्रियः पतिविनादपहारं दद्यात्त्यर्थं न कुर्व्युः । कथञ्चनेत्यनेनापहारस्य
सर्वथैवाग्रेयस्वरतामाह । अपहारो हि चौर्यम् । नटनर्त्तकादौ दद्यादानम् ।
सूत्रवस्त्रादिपरिहित्वाद्यदभ्यादिवमुक्तोत्प्रेष्येवमाद्यपि संयताया अनौचित्याच्चौर्यतुल्य-
मित्यपहारशब्दोऽगौषः । धर्माद्यर्थदानादिकम् न तथेति नापहारशब्देन बोधयितुं
शक्यते । तस्मात्सर्वं सुखम् ।

4. पत्न्या अपुत्रविभक्तासंख्यिपतिस्वापतेयग्रहणे प्रथमाधिकारप्रतिपादका-
न्यपराख्यपि भूयांसि स्मृतिवचनानि । तत्र दृष्टव्यमिति । आम्नाये स्मृतितन्त्रे च कौका-
चारे च सूरिभिः । शरीराद्धं स्मृता जाया पुण्यापुण्यफले समा । यस्य नोपरता
भार्या देहाद्धं तस्य जीवति । जीवत्यर्द्धशरीरेऽयं कथमन्यः समाप्नुयात् । सकुल्यैर्विद्य-
मानैस्तु पित्रमाहसनाभिभिः । अपुत्रस्य प्रमीतस्य पत्नी तद्ग्राह्यारिणीति ॥

योगीश्वरोऽपि पूर्वाभावे पराधिकारं वदन् सर्वप्राथम्येन पत्न्या श्वाधिकार-
मभिधत्ते ।

विष्णुरपि । अपुत्रस्य धनं पत्न्यभिगामि तदभावे दुहितृगामि तदभावे पित्र-
गामि तदभावे मातृगामि तदभावे भ्रातृगामि तदभावे भ्रातृपुत्रगामि तदभावे बन्धु-
गामि तदभावे सकुल्यगामि तदभावे शिष्यगामि तदभावे सहाध्यायिगामि तदभावे
ब्राह्मणधनवर्ज्यं राजगामीति । बन्धुरश्च सपित्रः सकुल्यः समीपः । बन्धुपदेन वक्ष्य-
मात्रपिहवग्भ्यादियग्रहणे योगीश्वरोक्तक्रमविरोधापत्तेः ।

आत्मायनोऽपि । पत्नी पत्युर्जनहरी या स्यादश्विचारिणी । तदभावे तु
दुहिता वयनूढा भवेत्तदा ।

कुलान्तरमपि । अपुत्रस्याथ कुलजा पत्नी दुहितरोऽपि वा । तदभावे पिता
माता भ्राता पुत्राश्च कीर्तिता इति ।

एतेर्वचनैः सर्वतः पूर्वम्पत्नी पतिधनभागिनीति प्रतिपादितम् ।

5. एतद्विद्वद्वाप्यपि वचनानि कक्षन्ते । तथा च गारदः । आहूयाम-
प्रजाः प्रेयात्स्विचेत्प्रजैत वा । विभजेरन्धनन्तस्य प्रेयास्ते स्वीधनं विना । भरवशास्य

कुर्वीरन् स्त्रीयामाजीवनक्षयात् । रक्षन्ति श्रव्यात्मर्षुचेदाष्टिन्धुरितरासु मिति ।
पत्नीसङ्गावेति आढ्यान्धनग्रहणम्भरखसु तत्पत्नीनामाह ।

मनुरपि । पिताहरेदपुत्रस्य रिक्थं भातर एव चेति । पित्रभात्रो विक्थ्येना-
पुत्रधनग्रहणाधिकारं वदति न तु पत्न्याः ।

अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् । मातर्यपि च वृत्तायां पितुर्माताहरे-
जनमिति च स्मृतिर्मातृपितामह्योरपुत्रधनाधिकारमभिदधाति ।

शङ्खलिखितपैठीनसियमा अपि । अपुत्रस्य स्वर्थात्स्य आढ्यामिद्रव्यन्तदभावे
पितरौ हरेयातां ज्येष्ठा वा पत्नीति भातुः पित्रोस्त्राभावे पत्न्याधिकारं कथयन्ति ।

देवलोऽपि । ततो दायमपुत्रस्य विभजेयुः सहेदराः । तुल्या दुहितरो वापि
भ्रियमाखः पितापि वा । सर्वथा भातरो माता भार्या चेति यथाक्रममिति । सर्व-
पूर्वाभावेन योगीश्वरेणाभिहितायाः पत्न्या आत्राद्यभावेऽधिकारमाचष्टे । आढ्यशब्दे-
नात्र भिन्नोदराः । सहेदराणां पृथगुपादानात् ।

कात्यायनोऽपि । विभक्ते संस्थिते त्रयं पुत्राभावे पिता हरेत् । आता वा जननी
वाद्य माता वा तत्पितुः क्रमादिति । पित्रादिषु ग्राहकेषु पत्न्या निर्देशमपि न
करोति ।

6. एतेषामन्योन्यविरुद्धानां वचनानान्धारेश्वर इत्थं व्यवस्थामाह । विभक्ता-
संख्येष्टभातुरपुत्रस्य पत्नी यदि नियोगमङ्गीकुर्वते तदेव पतिधनं लभते । अनियोगा-
र्थिन्यान्तु तस्यामविभक्तसंख्येष्टपत्नीवद्भरणमात्रमेव नियोगद्वारैवापुत्रपत्न्याः पतिस्वा-
पतेयस्वामित्वम् । न च वीजम् । अनेकस्मृतिभ्रष्टद्वारैव तस्या धनसम्बन्धबोधनम् । तथा
च गौतमः । पिण्डगोत्रर्विसम्बद्धा रिक्थम्भजेरन् स्त्री वानपत्यस्य वीजं वा लिप्सेतेति ।
अनपत्यस्य रिक्थम्पिण्डगोत्रर्विसम्बद्धा भजेरन्तस्य स्त्री वा रिक्थम्भजेत् । यदि वीजं
लिप्सेत । वा शब्दो यदिशब्दार्थोऽन्यथा रिक्थग्रहणवीजलिप्सेयोरतुल्यत्वेन विकल्पा-
र्थज्ञानुपपत्तेः । तथा मनुरपि । धनं यो विभ्रयाद्भ्रातुर्भृतस्य स्त्रियमेव वा । दोऽपत्यं
भातुरत्याद्य दद्यात्तस्यैव तज्जनमिति विभक्तधनसम्बन्धमप्यपत्यद्वारेणैव पत्न्या दर्श-
यति । तथा विभागाभावेऽपि । कर्त्तव्यान् ज्येष्ठभार्यायां पुत्रसुत्यादयेद्यदि । सम-
स्तत्र विभागः स्यादिति धर्मे व्यवस्थित इति वदन्नपत्यद्वारा धनसम्बन्धोऽस्तीत्याह ।
तेनान्यव्यतिरेकाभ्यामपत्यद्वारक एव पत्न्या धनसम्बन्धो नान्यथेति सिद्धम् ।
वशिष्ठोऽपि । रिक्थलोभात्राणि नियोग इति रिक्थलोभप्रयुक्तं नियोगं प्रतिषेधमङ्गीक-
तनियोगाया एव धनसम्बन्धोनेतरस्या इति स्पष्टमेवाचष्टे । तथा च आढ्यामप्रजा
इत्यादीनि नारदादिबचनान्यनियोगार्थिनीविषयाणि पर्थवस्यन्ति । अपुत्रा योचित-
क्षेपां भर्त्तव्याः साधुवृत्तयः । निर्वास्या अभिचारिण्यः प्रतिज्ञासाक्षयैव चेति योगी-
श्वरोऽपुत्राद्यामन्यादियोचिताम्भरखं भावमात्राः पुत्रस्यैव धनसम्बन्धप्राधान्यात्तत्कृत
एव तत्स्त्रीणां धनसम्बन्ध इति सूचयन्त्यायसाभ्यात्सर्वत्रापत्यमूलकमेव स्त्रीणां रिक्थ-
ग्रहणं ज्ञापयति । यथार्थं प्रत्युत्पन्नं तज्जनविज्ञातास्तु ये । अरिक्थभाजस्यै सर्वे

यासांश्चादनभाजना इति स्मृतिः पुत्रवाद्यामपि पुत्रादीनां यज्ञानधिष्ठतानां रिक्त्या-
नधिकारं वदन्ती दण्डापुण्यायेन सुतरामभर्तृकाञ्चान्तदनधिकारिणीनां धनसम्बन्धं
निरस्यति । तथा स्मृत्यन्तरमपि । यज्ञार्थं विहितं वित्तं तस्मात्तद्विनियोजयेत् ।
स्थानेषु धर्मयुक्तेषु न स्त्रीमूर्खविधर्म्मिष्विति स्थादिषु धनविनियोगमपि प्रतिषेधस्या-
क्षात्तस्या एव कृत्स्नधनग्रहणं सुदूरं दूषयतीति ।

7. तदिदं विज्ञानेश्वरादयोनानुमन्यन्ते । पत्नीदुहितर इत्यादिषु साक्षान्नि-
योगानुपादानात् प्रस्तावाभावाच्च । किञ्च नियोग एव पत्न्या रिक्त्यसम्बन्धप्रयोजक-
स्तदुत्पन्नमपत्यं वा । प्रथमेऽनुत्पादितपुत्राया अपि स्त्रीकृतनियोगाया धनाधिकारः
स्यान्नियोगोत्पन्नपुत्रस्य च न स्यान्नियोगमात्रेशैव भर्तृधनस्यान्यात् । द्वितीये वचनान्त-
रैरेवापत्यस्य धनसम्बन्धसिद्धेः पत्नीवचनमनर्थकम् । अथ स्त्रीणां पतिमात्रद्वारको
धनसम्बन्धो न प्रकारान्तरेण । जीवति पत्यौ तद्द्वारको मृते त्वपत्यद्वारक इति बोध-
नार्थं नियोगार्थिनीपत्नीपरं पत्नीवचनमितिमतम् । तदसत् । अध्यागन्ध्यावह्निकमि-
त्यादि वक्ष्यमाणवचनैरन्यथापि तासान्धनसम्बन्धबोधनात् । भर्तृधने द्वेषैव सम्बन्धो
नियम्यत इति चेत् । तर्हि जीवति पत्यौ तद्धनसम्बन्धस्य पाणिग्रहणाद्वि सहात्मि-
त्यादि गौतमवचनेनैव सिद्धेर्मृते तु तस्मिन्नियोगनिमित्ततद्धनसम्बन्ध उच्यमानः क्षेत्र-
जपुत्रस्यैवोक्तो भवति सोऽपि प्रागुक्त इत्यपुत्रप्रकरणे पत्नीत्यनारभ्यमेव ।

यच्च गौतमवचनं वीजं वा लिप्सेतेति यदि वीजं लिप्सेतेत्यर्थकतया नियोग-
द्वारक एव धनसम्बन्धोऽपुत्रपत्न्या इत्यत्र प्रमाणमित्युक्तं तदप्ययुक्तम् । वाक्यस्य
पक्षान्तरवाचित्वेन यद्यर्थाप्रतीतिः । धनग्रहणवीजलिप्सेयोरतुल्यार्थतया विकल्पार्थ-
कत्वासम्भवे निपातानामनेकार्थत्वात्प्रकृतान्वयोपयोगी यद्यर्थ एव कल्प्यत इति
चेत् न । वीजं वा लिप्सेत संयता वा भवेदिति प्रासङ्गिकधर्म्मोन्तरोद्देशरूप-
तया विकल्पार्थकताया एव सम्भवात् । तथा च गौतमवचसापि नियोगनिर-
पेक्षमेव भर्तृरिक्त्यग्रहणमुक्तमभवति । किञ्च विधवानियोगस्य निषिद्धत्वादपुत्राश्रयनं
भर्तुः पाकयन्तीत्यादि मन्वादिवचनैः संयताया एव धनाधिकारप्रतिपादनाभिर्वास्या
अभिचारिण्य इत्यादिना भरण्यामात्रस्याप्यसंयतानामभावात्कृत्यभर्तृरिक्त्यग्रहणं दूरा-
पास्तमेव ।

यच्चाभिहितं धनं यो विभृयाद्भ्रातुः । कनीयान् व्येकभार्यायां । रिक्त्यलोभाङ्गास्ति
नियोग इति मन्वादिवचनैर्विभक्ताविभक्तधनसम्बन्धोऽन्वयव्यतिरेकाध्यामपत्यद्वारक एव
पत्न्या आयातीति । तदपि वार्तम् । अविभक्ते संखट्टिनि वा भर्तारि प्रेते पुत्रद्वारक
एव तस्यास्तद्धनसम्बन्धेति । धनलोभेन नियोगो नाभ्युपेय इति । तत्तात्पर्यात् ।
अतएव । संखट्टानान्तु यो भागः स तस्या नेष्यते बुधैरिति अभिधाय तत्स्त्रीणा-
मनपत्यानाम्भरण्यामात्रं नारदेन प्रतिपादितम् । न चैवं भ्रातृणामप्रजाः प्रेषादित्वस्यापि
संखट्टाविभक्तविषयत्वे संखट्टागन्तु भाग इत्यनेन पौनरुक्त्यं स्यादिति वाच्यम् । तदंश-
ववरणपुष्पक स्त्रीधनाविभागत्यं तद्भरण्यायोरपूर्वयोर्विधानात् । यत्पुत्रा योचित-

सैवामिति योऽमीश्वरवचनं तत्तु स्त्रीवादीनां प्रकान्तानामेवामिति सर्व्वनाम्ना पराम-
र्शात्तत्स्त्रीविषयमिति विभाजानधिकारिनिरूपकप्रस्तावे वक्ष्यते ।

यदपि द्विजातिधनस्य यश्चार्थत्वात्तदनधिकारिण्य प्रमीतपतिकया तद्व्यवहृम-
नर्हन्मिथुक्तान्तदप्युक्तं । यश्च शब्दस्य दानायुपलक्षकत्वात् तत्र च तस्या अप्यधिकारात् ।
यथा श्रुते यश्च भिन्नदानहेमादिष्वप्यविनियोगप्रसङ्गः । वस्तुतस्तु केवलधर्मार्थत्वमपि
धनस्य नास्ति । धर्मनर्थश्च कामश्च यथाशक्ति न ह्यापयेत् । तथा पूर्व्वोक्तमध्यन्दिना-
पराङ्मानयनात् कुर्व्याद्भर्मार्थकामेभ्य इत्यादिभिरर्थकामयोरपि तस्याध्ययोरावश्यक-
त्वात् । यश्चार्थत्वश्च त्रयस्य यदि स्याद्विरण्यधारणस्य कालव्यभिचारिहिरण्यसम्बन्धेन
कालार्थैव स्यादिति पुरुषार्थत्वं यत्तस्य स्थापितन्तत्रैव विरुध्येत । न स्त्री स्वातन्त्र्यमर्ह-
तीत्यादि वचनात्पारतन्त्र्यमात्रमस्तु स्त्रियाः न तु धनग्रहणे कोऽपि विरोधः । यश्चार्थ-
त्रयमुत्पन्नमिति तु धर्मविनियोगप्रशंसार्थम् । अतएव स्थानेषु धर्मयुक्तेषु न स्त्रीमू-
र्खविधर्मिभ्यमिति वाक्यशेषः । मिताक्षराद्धतस्तु । यश्चार्थं जन्ममददद्भासः काको-
ऽपि वा भवेदिति दोषश्रवणस्य पुत्रादिष्वप्यविशेषेण पित्रा यश्चार्थमर्जितं तत्पुत्रा-
दिभिरपि तत्रैव विनियोज्यं नान्यत्रेत्येवमपरमेतदित्याहुः ।

८. श्रीकरादयस्तु । भार्याभरणमात्रपर्याप्तं यदि भर्तृधनन्तदा सर्व्वमेव
गृह्णाति । अतिरिक्तश्चेद् आत्रादय इति विषयव्यवस्थामाहुः । कृत्स्नमंशं जमेत
चेत्तेतदपि तत्परमेव । वर्तनदानस्यावश्यकत्वात् । तेन सर्व्ववाक्कानामविरोध इति
च तत्रोपपत्तिरूपयन्ति ।

वार्तमेतत् । सद्यश्चतुधनपदस्य पञ्चमेऽस्त्रीवनपर्याप्तधनपरत्वं आत्राद्यपेक्षश्च
धनमात्रपरत्वमिति तात्पर्य्यभेदस्य सति सात्त्व्यसम्भवेऽन्याय्यत्वात् । मनुवचने कृत्स्न-
पदवैवर्थापातात् किञ्च । सत्त्व्यप्यौरक्षेण पुत्रेषु तत्समांशग्रहणं जीवदजीवद्विभागयो-
क्तं । यदि कुर्व्यात्समानंशान् पञ्चः कार्य्याः समांशिकाः । पितृत्वं विभजतां माता-
प्यंशं समं हरेत् । इत्याभ्यां वचनाभ्याम् । असत्स पुत्रेषु पत्नी भरतमात्रं जमेत इति
महान् आमेहः । तत्रापि जीवनपर्याप्तमेवांशशब्देन विवक्षितमिति चेन्न । अंशशब्द-
समशब्दयोरानर्थक्यप्रसङ्गात् । दत्ते त्वर्ज्य्यकथ्येदित्यत्रापि जीवनेऽप्युत्तरत्वाव-
श्यम्भावे सर्व्वयार्ज्यपदार्थत्वागपत्तेश्च । अल्पधने पुत्रसमांशं बहुधने जीवनेऽप्युत्त-
मात्रं विवक्षितमिति तु विधिवैवक्यापत्तेरत्युक्तम् । तथाहि । तावेव समांशशब्दौ
वाक्कान्तरमपेक्ष्य बहुधने जीवनमात्रपर्याप्तधनपरौ कदाचित् । अल्पधने तु यथा
श्रुतार्थकावित्तेकस्मिन्विधौ वाक्यार्थभेदेन वाक्यभेदापत्तेर्युक्तम् । युगपच्छक्तिजन्मा-
वृत्तिद्वयापातश्च ।

यथा चातुर्मास्यप्रकरणे इयोः प्रवचयन्तीति वाक्येन पर्य्यपक्षिणा सौमिकप्रवच-
नातिदेश उत्तरवेदिमुपकिरन्ति न सुनासीरीय इत्युत्तरवेदिप्रतिषेधेऽप्राप्तस्य प्रतिषे-
धायोगाज्जेतुल्येनोक्ते राजानैकदेशिना नातिदेशप्राप्तायाः सौमिकोत्तरवेदेदर्य प्रतिषेधः
किन्तुप्राच वपन्तीति प्राकरद्विकवचनप्राप्ताया इत्युपपत्तेः प्राकरद्विकं वचनं प्रव-

भोक्तृमयोः पूर्वबोः प्रतिषेधमपेक्ष्य पाक्षिकीं प्राप्तिं मध्यमयोस्तु निष्प्रतिषेधमेवा-
पाक्षिकीमुत्तरवेदेः प्राप्तिं करोतीति विधिवैषम्यप्रसङ्गेन पूर्वपक्षिणा तन्मते दूषिते
परमसिद्धान्तिना पूर्वपक्ष्युक्तविधिवैषम्यभयादेव प्रथमोक्तमयोः पूर्वबोःप्राप्तप्रतिषेधा-
योगात् वैश्यदेव इत्ययं नित्यानुवादः उपात्र वपन्तीति तु ह्योः प्रक्षयन्तीत्याद्यर्थवाद-
सङ्कलनं मध्यमयोरेव वरुणप्रघाससाकमेधपूर्वबोः उत्तरवेदिं विधत्ते न तु वचना-
तिदेशोऽयमिति प्रतिपादितम् ।

9. अत्र कश्चिदाह आहृत्यामपुत्रधनयाहिवं भरयं ब्राह्म्य कुर्वीरन् स्त्रीणा-
माजीवनक्षयादिति भरयोपयुक्तधनदानञ्च तत्स्त्रीणामुक्तं । यदा भरयमात्रोपयुक्तमेवा-
पुत्रधनं ततोऽपि न्यूनं वा । तदापि किं आतर एव गृह्णन्ति पत्नी वेतिविरोधे पत्न्या
एव धनग्रहणं पत्नीर्दुहितर इत्यादिना पूर्वपत्नीसत्त्वज्ञापनयोच्यत इति ।

तदपि मन्दम् । पूर्वोक्तविधिवैषम्यस्यात्रापि तादवस्थात् । धनभागिति पदं
वाक्यान्तरमपेक्ष्याव्यधने जीवनमात्रपर्याप्तधनभाक्त्वं पत्नीविषये वदति पित्रादिषु तु
सकलधनभाक्त्वमिति ।

10. कथन्तर्हि विरोधपरिहार इति चेत् । ऋणु । पिता हरेदित्यादिषु
क्रमाप्रतीतेरपुत्रधनग्रहणाधिकारमात्रप्रदर्शकानि तानि । योगीश्वरवचसि त्वेषाम-
भावे पूर्वस्य धनभागोत्तर इति क्रमपरत्वात्पत्न्यादिगणस्य निवज्जक्रमस्याभावेऽपि
तेषामर्थविरोधात्पत्न्याद्यभावे पित्रादयोऽपुत्रधनयाहिव इति ।

शङ्कितव्यभिचारायास्तु पत्न्याः हारीतेन धनग्रहणं निषिद्धम् । विधवा यौव-
नस्या चेन्नारी भवति कर्काशा । आयुषः क्षयकार्यं तु दातव्यञ्जीवनन्तदेति ॥ अस्मादेव
वचनादनाशङ्कितव्यभिचारायाः सकलभर्तृधनग्रहणङ्गभ्यते । अतएव शङ्कवचने ज्येष्ठा
वा पत्नीत्युक्तं ज्येष्ठा गुणैः प्रशंस्या । न तु वयोज्येष्ठा । मननापि वर्षक्रमेण ज्यैष्ठ्यं
कथितम् । यदाह । यदि स्वाञ्च पराञ्चैव विन्देरन् योषितो द्विजाः । तासां वर्षक्रमे-
णैव ज्यैष्ठ्यं पूजा च वेदस्य चेति ॥ अतः परिणयनवयोर्था कनिकापि सर्वार्थवासवार्था-
तो ज्येष्ठा सर्वार्थस्वपि गुणवती । तथा च मनुः । भर्तुः शरीरशुश्रूषां धर्मकार्यञ्च
नैत्यकम् । सा चैव कुर्यात्सर्व्वेवाशासजातिः कथञ्चन यस्तु तत्कारयेन्मोहात् सजात्या
स्थितयाऽन्यथा । यथा ब्राह्मणचारुहातः पूर्व्वदृष्टस्तथैव सः । योगीश्वरोऽपि । सर्वार्थास्तु
विधौ धर्म्ये ज्येष्ठया न विनेतरा । तथा च यज्ञसंयोगात्पत्नीशब्देनापि सैवाच्यते ॥
सर्वार्थाया अभावे तु याऽनन्तरवर्णा सैव । तथा च विष्णुः । सर्वार्थाभावे त्वनन्तरैवापदि
नत्वैव द्विजः शूद्रया धर्मकार्यमिति । अत्र कुर्यादित्यनुवर्तते । तथा च ब्राह्मणस्य
ब्राह्मण्यभावे क्षत्रियैवापदि न तु वैश्यशूत्रे परिणीते अपि । क्षत्रियस्य क्षत्रियाया
अभावे वैश्यैव । वैश्यस्यानन्तरापि शूद्रा न किन्तु सैव । शूद्रायाः सर्व्वथा निषेधात् ।

तथा चानाशङ्कितव्यभिचारा वर्षक्रमेण भर्तृधनङ्गृहीत्वान्थाः सपत्नीः परिपा-
कयेत् । वयुःसाहस्रस्तु यथा खं विभज्य गृहीयुः । अतः पत्नीत्येकवचनं जात्यभि-
प्रायेण ।

भोक्तारस्तेविभक्तं पिण्डरूपं दायमश्रुतीवविभक्तदायादाः सपिण्डा एकपिण्डसम्बन्धात् पञ्चमस्य तु पूर्वस्य मध्यमः पञ्चमो न पिण्डदाता न च तत्पिण्डभोक्ता एवमधस्तनोऽपि पञ्चमो मध्यमस्य न पिण्डदाता नापि तद्भोक्ता । एतेन दृढप्रपितामहात् प्रभृति पूर्वपुरुषास्त्रयः प्रतिप्रणमृप्रभृत्यधस्तनपुरुषास्त्रय एकपिण्डभोक्तृत्वाभावाच्चिभक्त-
दायादाः पञ्चमप्रभृतय उभयतः सकुल्य इत्याचक्षते मुनिः कुलमात्रसम्बन्धात् ।

इदं सपिण्डत्वं सकुल्यत्वं दायग्रहणोपयोगित्वेनोक्तं तत्प्रकरणपाठात् । अशौच-
विवाहाद्यर्थन्तु पिण्डलेपमुजामपि । लेपभाजश्चतुर्थाद्याः पित्राद्याः पिण्डभागिनः ।
पिण्डदः सप्तमस्तेषां सापिण्डं साप्तपौरुषमिति स्मरणात् । सपिण्डता तु पुरुषे सप्तमे
विनिवर्त्तत इति च । पञ्चमात् सप्तमादूर्ध्वं मातृतः पितृतस्तथेति । योगोन्मरवाक्यैक-
वाक्यतया सप्तमे पुरुषे स्थित्वाऽष्टमे विनिवर्त्तत वा इति व्याख्येयम् । तेन यथाप्रप्ता-
नान्तु स्त्रीणान्निपुरुषं विज्ञाय तद्वत्वा शौचप्रकरणपठितं तन्मात्रोपयोगि त्रिपुरुषं
सापिण्डं तथेदं विभागमात्रोपयोगीति ध्येयम् ।

कात्यायनस्तु स्पष्टमेव पुत्रपौत्रप्रपौत्राणां धनग्रहणमाह । अविभक्ते मृते
पुत्रे तत्सुतं रिक्थभागिनम् । कुर्वीत जीवनं येन लब्धं नैव पितामहात् । लभेतांशं स
पितृन्तु पितृश्रातस्य वा सुतात् । स एवांशस्तु सर्वेषां भ्रातृणां न्यायतो भवेत् ।
लभेत तत्सुतो वापि निवृत्तिः परतो भवेत् ॥ इति प्रपौत्रानन्तरमुक्तो यः प्रणमृ-
प्रभृत्यनधिकारः स सपिण्डत्वेन ध्येयः । सकुल्यत्वेन त्वस्येव यथाप्रत्यासत्तिः ।

भ्रातृणामेकजातानामित्यादि तु दायातिरिक्तश्राद्धादिपुत्रकार्यकारित्वपरं
भ्रातृपुत्रस्य पुत्रीकरणसम्भवे नान्यः पुत्रीकरणोय इति नियमार्थम् । अन्यथा भ्रातृ-
पुत्रस्य भ्राजनन्तरमभिधानमपुत्ररिक्थद्वार्यभिधायकौ वाक्ये क्रमपरे न सङ्गच्छेत ।

पुत्रादीनाम्नयाणाम्पित्रादित्रिकमहोपकारकारित्वात् पुत्रादिभिर्गृहीतं धनं
स्वामिन एवोपकारकमुपकारप्रत्यासत्त्वा तदीयमेव । उपकारप्रत्यासत्तिश्चाभ्यर्हिता ।
यथाह । ज्येष्ठेन जातमात्रेण पुत्री भवति मानवः । पितृणामष्टयस्यैव स तस्मात्तन्वु-
मर्हति ॥ तस्मादिति हेतुत्वेनोपकारित्वस्योपन्यासाद्वयभागप्रकरणे धनस्वात्तुपकारक-
त्वातिशयो यत्र स्थितस्य तद्वनस्य भवति स एव तद्वनयाहीति प्रत्यासत्तिरौत्सर्गि-
क्यभ्यर्हिता चेति सूचितम् ।

पुत्रादीनां महोपकारकत्वज्ञानेकश्रुतिस्मृतिपुराणादिप्रसिद्धम् । तत्र श्रुति-
र्हरिश्चन्द्रोपाख्याने बह्वृचब्राह्मणे । यं त्विमं पुत्रमिच्छन्ति ये विजानन्ति ये च न ।
किंक्षितं पुत्रेण विन्देत तन्ममाचक्ष नारदेति । गाथया हरिश्चन्द्रेण पृष्ठो नारदे
दशभिर्गाथाभिः पुत्रमाहात्म्यपरभिः प्रबोधितवानित्युक्तम् स एकया पृष्ठो दशभिः
प्रत्युवाच ऋषभस्मिन् सन्नयत्वमृतत्वञ्च गच्छति । पिता पुत्रस्य जातस्य पश्येच्चजीवतो-
मुखमित्यादिना । स्मृतयश्च । मनुविष्णु । पुत्राप्नो नरकाद्यस्मात्पितरन्वायते सुतः । तस्मात्
पुत्र इति प्रोक्तः स्वयमेव स्वयम्भुवा ॥ शङ्खनिखितौ । पितृणामष्टयो जीवन्मुक्ता पुत्र-
मुखमपिता । खर्जी सुतेन जातेन तस्मिन् संवत्स्य तद्वनम् । अभिदोषकयो वेदा

यज्ञाश्चैव सदक्षिणाः । व्येकपुत्रप्रसूतस्य कलां नार्हन्ति धोऽङ्गिम् ॥ मनुलिखित-
वशिरुहारीताः । पुत्रेण लोकान् जयति पौत्रेणानन्त्यमम्रुते । अथ पुत्रस्य पौत्रेण
ब्रध्नस्याप्नोति पिष्टपम् ॥ याज्ञवल्क्यः । लोकानन्त्यन्दिवः प्राप्तिः पुत्रपौत्रप्रपौत्रकैः ।
यस्मात्तस्मात् स्त्रियः सेव्याः कर्त्तव्याश्च सुरक्षिता इति ॥ पुराणादिषु तूपाख्यानानि
पुत्रादिप्रशंसाशंसीनि बह्वनि ।

तस्मात् प्रपौत्रपर्यन्ताभावे विभक्तासंख्यपतिरिक्थहारिणी पत्नीति सिद्धम् ।

12. अत्र जोमतवाहनः । दृष्टस्यतिविरोधान्नयेयं व्यवस्था यदाह । विभक्ता
भातरो ये च संप्रीत्यैकत्र संस्थिताः । धनविभागकरणे तेषां व्येद्यं न विद्यते ।
यदा कश्चित्प्रमीयेत प्रजवेदा कथञ्चन । न लुप्यते तस्य भागः सोदर्यस्य विधीयते ।
या तस्य भगिनी सा तु ततोऽंशं लब्धमर्हति । अनपत्यस्य धर्मेऽयमभार्यापिटकस्य
च । संख्येष्टानान्तु यः कश्चिद्विद्याशौर्यादिना धनम् । प्राप्नोति तस्य दातव्यो ह्यंशः
शेषाः समांशिन इति ॥ अत्रोपक्रमोपसंहारयोः संख्येष्टत्वकीर्त्तनात् तत्सन्दर्शपतितम्
लुप्यते तस्य भागः सोदर्यस्य विधीयत इति वचनं संख्येष्टविषयमवश्यं वाच्यन्तत्र
चानपत्यस्य धर्मेऽयमभार्यापिटकस्य चेत्यभिधानात्पुत्रदुहितृपत्नीपिटृणामभावे संख्ये-
ष्टोदराधिकारः प्रतीयत इति कथमस्य पत्नीबाधकत्वम् । किञ्च न लुप्यत इति
संख्येष्टविभक्तभ्रात्रन्तरीयद्रव्यस्य मिश्रीभूतस्य लोपाशङ्क्यामुपपद्यते । विभक्तासंख्ये-
ष्टे तु विभक्ते का लोपाशङ्का तस्मात्संख्येष्टविषयत्वमेवामीषां लिङ्गादपि ।

किञ्च । पत्नीतः पूर्वं भ्रात्रधिकारबोधकशङ्कादिवचनानां संख्येष्टविभक्तविष-
यत्वं विस्पष्टवचनान्तराश्रयायादा प्रवणादुच्यते । नाद्यः विस्पष्टविशेषवचनाभावात् ।
संख्येष्टनस्तु संख्येष्टीत्यादि वक्ष्यमाश्रयवचनान्तु भ्रात्रधिकारावसरे विशेषकथनं नामुमर्थ-
मवगमयति । दृष्टस्यतिवचनान्तु पुत्रादिपिटपर्यन्ताभावे संख्येष्टोदराधिकारबोधकं
प्रयुतासंख्येष्टविषयकतामेवावगमयति । न द्वितीयः । न्यायोच्चयं वाच्यः । अविभाग-
संसर्गयोर्यदेकस्य धनं तदेवापरस्यापोति न्यतस्य तत्र स्वत्वेऽपगतेऽपि जीवतस्तत्स्वात्त-
द्गामिता युक्ता न स्वाभ्यन्तरकल्पनेति । न चासौ युक्तः । अविभागसंसर्गवतामप्य-
विज्ञातैकदेशव्यवस्थितिप्रतिनियताश्रयमेव स्वत्वं नत्वैकैकम् सर्वेषां नापि समये
अनेकस्त्वोत्पादविनाशकल्पनाप्रसङ्गात् ।

किञ्च । पाणिग्रहणाद्वि सङ्ख्यमित्यादिप्राग्लिखितगौतमादिवचनेभ्यः पत्न्याः
परिग्रयादुत्पन्नम्यतिधने सत्वमविभक्तसंख्येष्टमर्द्धमरखे नश्यत्यन्वयः च न नश्यतीति
कल्पनायाव्यमात्राभावः । पुत्रादिषु सत्सु तदधिकारशास्त्रवजादेव पत्नीस्त्वनाशः
कथ्यते । अत्रापि संख्येष्टविभक्तभ्रात्रधिकारशास्त्रात्तन्माशः कथ्यत इति चेत् ।
अन्यस्य तादृशशास्त्रस्यादर्शनात् । अस्य चेतरेषा अन्योन्याश्रयप्रसङ्गादसिद्धेः ।
सिद्धे हि संख्येष्टविभक्तमर्द्धमरखे पत्नीस्त्वनाशे भ्रात्रधिकारशास्त्रस्य तद्विवय-
कत्वम् । सिद्धे च तस्मिन् पत्नीस्त्वनाशकल्पनेति । अतएव योगीश्वरविष्णवादि-
वचने पुत्रराहित्यमेवेपातं न तु विभक्तात्वासंख्येष्टत्वे । विभागस्योक्तत्वासंख्येष्टिनाश्च

वक्ष्यमाणत्वादर्थादुपात्ते एवेति चेत् । तर्हि मुख्यगौणपुत्रेषु रिक्त्वग्राहितयोक्तेषु तदितरविषयत्वमप्यर्थात्सिद्धातीत्यपुत्रत्वमपि नोपादेयम् । अपुत्रस्यैत एवानेनैव क्रमेणेति नियमार्थतया तत्सार्थक्यमन्ययोरपि तुल्यम् । विभागोक्तपर्थवसानन्तु न जातमेव । संवृष्टिवचनं भ्रात्रधिकारावसरे विधानार्थं पत्न्याद्यपवादार्थमित्युक्तमेव ।

किञ्च । शृङ्खलित्वादिवचनानामविभक्तसंवृष्टभाटपरत्वे तादृशस्यापुत्रस्य धनन्तद्विधभाटगामि तदभावे पितरौ हरेतामित्यस्य कोऽर्थः । तदा च विकल्पनीयम् । किं विभक्तासंवृष्टौ पितरौ गृह्णीयातामिति । उताविभक्तसंवृष्टाविति ।

तत्र न प्रथमः कल्पः । तादृशयोः पित्रोः पत्नीबाध्यत्वात्कथं भ्रात्रभावे पत्नीतः पूर्वन्त्ययोरधिकारबोधः । नापि द्वितीयः । अविभक्तसंवृष्टपितृग्राह्यत्वे सर्वेषामविवादाद्वचनवैयर्थ्यात् । अपि च । यथा पित्रा भ्रात्रा च विभक्तासंवृष्टधने शरोरदाहृतया आत्मा वै जायते पुत्रः यथैवात्मा तथा सुत इत्येकत्वस्मृतेर्जनदेहयोश्च पौत्रयोः पितुः प्रभुत्वात्तत्पितृदेयपितामहप्रपितामहपिण्डयोर्देये सपिण्डनेन मृतस्य पुत्रस्य भोक्तृत्वाज्जीवति च पितरि पुत्राणां पार्वण्यपिण्डदानाभावाद् भाटभ्यः पूर्वम्पित्रोरधिकारस्तथेतरत्रापि युक्तः । अविभागसंसर्गयोरविशेषाद्वा तुल्याधिकारो युक्तो न तु भ्रात्रभावे पितुरिति ।

किञ्च । पित्रोरविभक्तसंवृष्टत्वविशेषणमनुपपन्नं मात्रा सह विभागाभावेनाविभक्तविशेषणानर्थक्यात् । अतएव संसर्गाभावाऽपि । विभागपूर्वकत्वात्तस्य । यथाह वृहस्पतिः । विभक्तो यः पुनः पित्रा भ्रात्रा चैकत्र संस्थितः । पितृव्येणाथवा प्रीत्या स तत्संवृष्ट उच्यते इति ॥ एतेन येषामेव हि पितृभाटपितृव्याणां पितृपितामहाजितद्रव्येणाविभक्तत्वमुत्पत्तितः सम्भवति तएव विभक्ताः सन्तः परस्परप्रीत्या पूर्वविभागध्वंसेन यत्तव धनन्तन्मम यच्च मम तत्तवेत्यभिन्नतयैकपाकेन पर्व्ववदेकगृहितया स्थिताः संवृज्यन्ते । न पुनरनेवम्भूता द्रव्यसंसर्गमात्रेण वणिजामपि सम्भयसमुत्थाने संवृष्टत्वव्यवहारापत्तेः । प्रीतिपूर्वोक्ताभिसन्धिरहितानां सौकर्यादिवशाद् द्रव्यमिश्रणेन व्यवहारादिकुर्व्वतां भ्रात्रादीनामप्यतएव न संवृष्टिव्यवहारः । तस्मान् भाटगतो भाटसद्भावाधिकारविरोधो दुःसमाधः ।

अतः प्रपौत्रपर्यन्ताभाव एवाविशेषेणापुत्रप्रतीतभर्तृधने समस्तेऽधिकारिणो पत्नीयेव रमणोयम् । नत्वश्रुतासंवृष्टविभक्तगोचरत्वकल्पना । जितेन्द्रियादयोऽप्येवमाहुः । प्रपौत्रपर्यन्ताभावे तस्या अपि भर्तुः आर्द्धादिनोपकारकत्वातिशयात् । पत्न्येव दद्यात्तत्पिण्डं दत्तमंशं हरेत चेति मनुवचनादिभ्यः । व्यासोऽपि । मृते भर्तरि साध्वी स्त्री ब्रह्मचर्य्यं व्यवस्थिता । स्नाता प्रतिदिनम्भक्षया भर्त्रे दद्याज्जलाऽत्रिणीन् । कुर्याच्चानुदिनम्भक्षया देवतातिथिपूजनम् । विष्णोराराधनश्चैव कुर्यान्नित्यमनुव्रता । दानानि विप्रमुखेभ्यो दद्यात् पुण्यविहङ्गये । उपवासांश्च विविधान् कुर्यात्प्रास्त्रोदितान् शुभे । लोकान्तरस्थम्भर्तारमात्मानश्च वरानने । तारयत्युभयं नारी निजं धर्मपरायणेत्वादि । तस्मात्पत्न्या अपि यतिनरकनिसारकत्वाज्जननीतया बाऽकार्य्यं

कुर्वन्ती स्त्रीयापुण्येनार्जुनशरीरसंस्कारात्पत्यञ्जं शरीरस्य यस्य भार्या सुराम्भिवेदितादि-
लिङ्गदर्शनात्पतिमपि पातयेदिति तथा गृहीतं स्वाम्यर्थमेव तद्धनं भवतीति सर्वेभ्यो-
ऽन्येभ्यः पूर्वं पत्न्या एव पतिधनग्रहणं युक्तम् ।

शङ्खादिवचने तु व्यवहितयोजना कार्या । अपुत्रस्य पुत्रपौत्रपुत्रपौत्ररहितस्य
स्वर्थातस्य धनं ज्येष्ठा प्रशस्यतमा पत्नी लभते । तदभावे दुहितृदौहित्रयोश्चाभावे
पितरौ लभेवात्तान्तदभावे भ्रातृगामीति । तदभाव इति मध्यपठितं पूर्वोत्तराभ्याम-
विरोधाद्यायस्य पूर्वमुक्तत्वाच्च सम्बध्यते । भ्रातृगामप्रजाः प्रेयादित्वादीनि नारदादि-
वचनान्यपत्नीरूपपरिणीतस्त्रीविषयाणि । स्त्रीशब्दमात्रोपादानात्तत्र । अत्र च
पत्नीशब्दोपादानात् । परिणीतानामपि चापत्नित्वं प्राक् प्रपञ्चितम् । अतएव नारदस्यैव
वचनान्तरे । अन्यत्र ब्राह्मणात्किन्तु राजा धर्मपरायणः । तत्स्त्रीणां जीवनं दद्यादेव
दायविधिः स्मृत इति ॥ स्त्रीशब्दश्रवणादपत्नीनामब्राह्मणस्त्रीणां वर्तनदानमाह ।
पत्नीनान्वब्राह्मणस्त्रीणामपि कृत्यभर्तृधनाधिकारमाह । वृद्धस्यतिः । येऽपुत्राः
क्षत्रविदभूद्राः पत्नीभ्रातृविवर्जिताः । तेषां धनं हरेद्राजा सर्वस्याधिपतिर्हि सः ॥
पत्नीभ्रातृविवर्जिता इति सत्रक्षत्रादिपर्यन्ताभावोपलक्षकम् । तेषां बद्धकामत्वान्मध्ये
राज्ञोऽननुप्रवेशात् । प्रदर्शितविश्रुवचने सहाध्यायिपर्यन्तानभिधाय तदभावे ब्राह्मण-
धनवर्जं राजगामीति कथनाच्चेति तत्वं विविनक्षिप्तम् ।

13. तत्रेदमालोचनीयं । नारदशङ्खादिवचनानामविभक्तसंलक्षितविषयत्वेन
या व्यवस्था तत्र न्यायविरोधो वा दूषणं वचनविरोधो वा । न तावद्यायविरोधः ।
बाधकन्यायस्याभावात् । प्रत्युत साधको न्यायोऽस्ति । तथाहि अविभक्तप्रमीते ताव-
त्तस्यांशएव नाभूत्किमियं गृह्णातु संलक्ष्ये जातोऽप्यंशः पुनः साधारणस्वत्वात्पत्न्याप-
गतः । न च साधारणस्वत्वाश्रयोऽप्यविविक्तलङ्कागोऽस्येवेति वाच्यम् । अस्तु तावतापि
यत्प्रतियोगिकं साधारणं स्वत्वन्तदपगमे विद्यमानस्वत्वकः संक्रम एवोचितोतत्वन्य
स्वत्वोत्पत्तिकल्पना । पाणिग्रहणादि सङ्कल्पान्मसु तत्फलेषु ग्रन्थपरिग्रहेषु चेति
गौतमवचनात्पत्न्या अपि तद्भागोऽविविक्तोऽपि स्वत्वमुत्पन्नं तद्भागः किमिति तत्स्वत्वे
कल्पयत इति चेन्न औपपत्तिकोऽस्ति न तु तात्त्विकः । पत्न्याः पतिग्रन्थे स्वत्वं क्षीरनीरव-
देकलोक्षीभावापन्नं सहाधिकारिकर्म्मोपयोगि न तु भ्रातृगामिव परस्परम् । तत एव
तेषां विभागो न तु जायापत्योः । एतद्व्यायमूलकमेव जायापत्योर्न विभागोविद्यत इति
वचनम् । तथा च पत्युः स्वत्वापगमे तस्याः स्वत्वापगमस्तत्रावश्यकः । एवञ्चाविभक्त-
संलक्षितपतिस्वापतेये पत्न्याः स्वत्वोत्पत्तिः कल्प्यतामविभक्तसंलक्षितस्वत्वस्य सतो-
ऽसाधारण्यं वेति वीक्षायामुत्तरपक्षकक्षीकरणमेवोचितं जाघवात् । न च पत्नेरव
विभागप्रतियोगिनी । प्रापकप्रमाणाभावात् । नचैतान्येव वचनानि प्रापकानि । तेषां
विषयविवादादिभक्तासंलक्षितविषयत्वेनाप्युपपत्तेः । अतएवान्योन्याश्रयोऽपि दवीयान् ।
विमर्शदर्शयान्तदप्रसङ्गात् । सति विमर्शे तद्विषयत्वनिश्चयादेव ।

अविभागसंसर्गवतामपीत्यादि च यदुक्तं तद्भास्यत्यक्ष्यतिचमम् । प्रतिनिध-

ताविविक्तस्त्वस्तीकारेऽपि संख्यविषयताया न्यायान्तरसिद्धत्वात् । नचाश्रुतविभक्तासंख्यविषयत्वं पत्नीत्यादिवाक्यानामप्रमाणाकम् विरुद्धनारदादिवचनानां व्यवस्थान्तरासम्भवे पूर्वोपपादितन्यायोपख्यवार्थापत्तेरेव प्रमाणात्वात् । व्यवस्थान्तरासम्भवश्च वक्ष्यामः ।

न च यथाविभागस्योक्तत्वात्संख्येतिनाश्च वक्ष्यमाणत्वादर्थोद्दिभक्तासंख्येतिधनपरत्वं पत्नीत्यादेरायातीति तदनुपादानन्तथा मुख्यगौणपुत्रविभागमुक्त्वा पत्नीत्यादिवचनारम्भादपुत्रधनविषयत्वमपि सिद्धति तेषामित्यपुत्रस्येत्यपि न बाध्यमिति बाध्यम् । एक एवौरसः पुत्रः न भ्रातरौ न पितरौ पुत्रा रिक्थद्वाराः पितुरित्त्वस्यार्थस्य स्मृत्यन्तरोक्तस्य योगीश्वरेण वचनान्तरेणानुक्तेस्तदवबोधनार्थत्वात् । अन्यथा जीवदजीवदिभागयोः सत्त्वपि पुत्रेषु पित्रपत्नीनां यथाश्रमाकृन्तथाप्रापीति शङ्का स्यात् । पुत्रविभागपर्यवसान उक्तत्वाच्च तच्छङ्कावसर इति यदि तर्हि स्मृत्यन्तरेष्वेक एवौरसो न भ्रातरौ न पितरौ इति स्वतन्त्रस्य मुख्यगौणपुत्रसत्त्वे पत्न्याद्यनधिकारप्रतिपादकशास्त्रस्य सुतरामानर्थक्यं स्यात् स्पष्टीकरणार्थं अर्थन्यायसिद्धमपि निबध्यते व्यवहारशास्त्र इति समाधिः पदभात्रे सुतरां सुवदः । स्पष्टार्थं विभक्तासंख्येति अपि कुतोऽनोपास्य इति चेत् । स्वतन्त्रेणानुगुणीनाम् । आरोपे सति निमित्तानुसरणमिति न्याये च यत्र न्यायार्थसिद्धनिबन्धनमस्ति तत्र सिद्धस्य गतिश्चिन्तनीयेति रीत्या स्पष्टीकरणार्थतया वैयर्थ्यं परित्रियते न तु तदभिधानापादनं सर्वत्रोचितम् ।

यच्च संख्येतिनास्तु संख्येतिवस्य भात्रधिकारावसरे विशेषविधानमात्रार्थत्वञ्च पत्न्याद्यपवादकत्वमित्युक्तान्तदतिवार्तम् । तुशब्दविरोधात् । उक्तरोत्तरपूर्वापवादसन्दर्भाच्च । अतएव प्रतिवाक्यं तुशब्दोपादानम् । स्त्रीवादिवाक्यं पुत्रादिसकलदायग्रहणाधिकारिणां स्त्रीवत्त्वादिनाधिकारापवादकमिति । अतएव मिताक्षरायां विज्ञानेश्वरेण तथैव तानि वचनान्यवतारितानि व्याकृतानि च ।

यत्तु किञ्चेत्यादिना शङ्कलितवचने भात्रभावे पित्रोरधिकारो विकल्पखण्डितस्तदप्यतिपाद्यम् । भवदन्मयापि युक्तमेव विभक्तासंख्येतिपरत्वे तस्य व्याख्यातुं शक्यत्वेनैवापर्यनुयोगात् ।

यथापि चेत्यादि । तदपि तुल्ययोगक्षेममित्युपेक्ष्यम् ।

यदपि किञ्चेत्यादि । तदपि मात्रांशे विशेषणसम्बन्धेऽपि योग्यतया पित्रांशे सम्बन्धादप्युच्यम् । वस्तुतस्तु साक्षान्मात्रा विभागाभावेपि जीवदिभागे पित्रिच्छया तस्या अपि भागसम्भवादजीवदिभागे तु साक्षादेव विभागोक्तेः प्रीत्याऽभिसन्धिविशेषपूर्वकं पुत्रैः सह संसर्गसम्भवात् । न चैवं विभक्तो य इत्यादिदृष्टस्यातिवचनविरोधः । अतएव मिताक्षराकृतप्राप्युक्तम् । संसर्गश्च न येन केनापि । किन्तु पित्रा पित्रथेन वेत्यत्र सम्प्रतित्वेन तद्वचनमुपन्यस्यतेति बाध्यम् । यतस्तथा सति सकललोकव्यवहारसिद्धौ दौहित्रादिसंसर्गोऽप्यन्यायः स्यात् । तस्माद्येषां परस्परविभागस्तेषामेव तत्पूर्वकः परस्परसंसर्गोऽप्यभिसन्धिविशेषपूर्वको न परस्परद्वयमित्रीकरणमात्रेण

वशिगादीनामिवेत्यत्र दृष्टस्पतिवचनतात्पर्यं मात्रादिनिवृत्तौ । त्रिदोषपरिसंख्या-
पत्तेः । अतएव मात्रा वा पिठव्येणाथ वेत्यनास्थायां वादिशब्दस्तत्रोपात्तः । रत्नाकरे
चण्डेश्वरेणाप्युक्तम् । अनास्थायां वाकारः । येन पिठव्यजेनांशिना हतविभाग
एकत्र स्थितः संदृष्टः सर्वलोकादृष्टो लभ्यत इति । वाचस्पतिरप्येवमेवाह । यत्तु
तेनोक्तं पृथग्धनानामेकत्रमेकमेव संसर्गोपाधवात् न तु विभागपूर्वकत्वं तत्र विशे-
षणं परस्परानुमतिश्च तत्र हेतुरिति । तन्न । पुनः शब्दविरोधात् विभागेऽपि संसर्ग-
शब्दप्रयोगापत्तेः जन्मना खत्वानङ्गीकारेण तत्रापि पृथग्धनमेकनात् अन्यथा विकल्प
उभयस्य शास्त्रार्थत्वात् पित्रादिसमुच्चितसंसर्गोऽपि सकललोकसिद्धो व्याह्रयेत ।
मिताक्षराकृतोऽपि न येन केनापीतिवदतो यथाकथंचित्तद्वयमिच्छासंसर्गव्याहृत्या
विभागपूर्वकाभिसन्निविशेषकृतसंसर्गनियम एवाभिप्रेतो न मात्रादिव्यावृत्तिः ।

मात्राधिकारावसरे संदृष्टिसोदरत्वादिविशेषविधानार्थत्वं च यदस्य संदृष्टि-
नस्तु संदृष्टीत्वादिवचनस्य भवताभिहितं तत्त्वतितुच्छम् पित्रादिषु गोत्रजादिषु चास्य
प्रदृश्यविरोधात् तच्च तत्रैव विल्लरेण वक्ष्यामः ।

तन्न तावद्व्यायविरोधो दूषणम् ।

नापि वचनविरोधः । संदृष्टस्याप्यभार्यापिठकस्योति तेन विशेषणादपत्याभाव
इव भार्यापित्रभाव एव संदृष्टिभ्रातृधनेऽधिकार आयातीति वाच्यम् । यतः संदृष्टि-
धनग्रहणं संदृष्टिनां तु योभागः स तस्यानेष्यते बुधैरिति नारदेन साक्षादेव तद्भा-
र्यायाः प्रतिषिद्धम् संदृष्टिनां तु योभागस्तेषामेव स इष्यते इति कल्पतर्ज्वादिहृतपाठे-
ऽप्येवकारेण पत्न्यादिप्रतिषेध आयात्येव । न चैवं नारदवचनम् भ्रातृश्यामप्रजा इत्यस्य
प्रक्रमबलात्संदृष्टिविषयत्वे संदृष्टिनां तु योभाग इत्यनेन पौनरुक्त्यं स्यादतः स्त्रीशब्द-
स्यात्र श्रवणादन्यत्र च पत्नीशब्दस्य पत्नीविषयत्वेन व्यवस्यैव साधीयसीति वाच्यम् ।
पूर्वोक्तविवरणेन स्त्रीधनाविभाव्यत्वतद्भरणमात्रविधानपरतया तदप्रसक्तेः । स्त्रीमात्रस्य
तद्धनग्रहणस्य पत्नीत्वादिवाक्यैः पत्नीपदोपेतैरप्रसक्तत्वेन तत्प्रतिषेधासंभवाच्च । वशिष्ठ-
वचने च रिक्थलोभादितिनियोगविशेषणं भवन्मतेऽनुपपन्नं । पुत्रादिरहितपतिधनग्रहणं
यदि विभागाविभागसंसर्गाद्यविशेषेणैव तस्याः सर्वोदौ तर्हि रिक्थलोभेन नियोगा-
ङ्गीकारस्तस्याः कदा प्रसक्तो यो निषिध्यते । मन्मते तु संदृष्टाविभक्तभ्रातृसत्त्वे नार-
दादिवचनात्तस्या अपुत्रधनसम्बन्धाभावेन पुत्रद्वारैव तत्सम्बन्धात्प्रसक्तो रिक्थलोभेन
नियोगस्वीकारः प्रतिषिध्यते । नचात्रापि पत्नीभिन्नाया भार्याया भर्तुर्धनानधिकारा-
त्तस्या एव रिक्थलोभेन प्रसक्तो निषिध्यते नियोगस्वीकार इति न भवदुक्तप्रसक्ति-
प्रतीक्षेति वाच्यम् । पत्न्या एव तत्र प्रसृतत्वात्तद्भिन्नभार्यापरत्वानुपपत्तेः । अतएव
धारेन्वरादिभिर्नियोगार्थिपत्नीपरत्वे पत्नीत्वादिवाक्यस्येदमेव वशिष्ठवचनं प्रमादत-
योपन्यस्तम् । तस्मान्नारदवशिष्ठवाक्यबलात् संदृष्टिभर्तृधनग्रहणप्रतिषेधः पत्न्या
दृष्टस्पतिवचने चानपत्तस्य धर्मोऽयमभार्यापिठकस्य चेति कथनात्पत्न्यां सत्त्वा
सोदरस्यापि संदृष्टिभ्रातृधनग्रहणप्रतिषेध इति विरोध आवाप्यकः कथञ्चिद्विषय-

व्यवस्थया परिहर्तव्योऽपरिहृतोऽन्यैः परिश्रियते । सन्दर्शोत्थितप्रकरणव्यवस्थाप्रसक्तमप्य-
भार्यापिटकस्य संवृष्टिविशेषव्यवस्थान्धासिद्धनारदादिवाक्यानुरोधादसंवृष्टिपरत्वा-
वश्यकतया बाध्यते । वाक्यविरोधे प्रकरणस्याप्रयोजकत्वात् । न चायमिति सर्वनाम्ना
संवृष्टिधनग्रहणरूपधर्मस्य प्रकान्तस्यानेन विशेषाभिधानादनपत्त्यस्येतिवदभार्या-
पिटकस्येत्यस्यापि संवृष्टिप्रमीतविशेषव्यवस्थामितिवाक्ययोरेवायं विरोधः न वाक्यप्रक-
रणयोरिति वाच्यम् । सर्वनाम्नः संवृष्टिधनग्रहणपरामर्शकत्वेऽपि सोऽयमनपत्त्यसंवृष्टि-
स्वामिधनग्रहणरूपो धर्मो भार्यापिटकरहितस्यासंवृष्टिनोऽप्यनपत्त्यस्य प्रमीतस्य ।
असंवृष्टिविभक्तप्रमीतस्य धनन्तु भार्यापिटकसहितस्यैवानपत्त्यस्य सोदरो गृहीयान्न
भार्यापिचन्यतरदितिवाक्यार्थोपपत्तेः । चकारोऽप्येवमनुक्तासंवृष्टिसमुच्चयार्था व्या-
ख्येयः । अतश्चासंवृष्टिविषयेयानेन प्रकरणविच्छेदे जाते संवृष्टानान्तु यः कश्चिद-
त्यग्रिमवाक्ये संवृष्टपदोपादानमपि सार्थकम्भवति अन्यथा प्रक्रमादेवात्रापि तस्मात्ते
नन्मन्दप्रयोजनं स्यात् । अतएव तार्क्ष्ये निविदधिकरणेऽसम्बद्धनिविद्विच्छिन्न-
सामिधेन्यवान्तरप्रकरणायाश्चसुपवीतं न सामिधेन्यङ्गमपि तु महाप्रकरणाद्ग्र-
पूर्णमासाङ्गम् । ये तु पश्चात्तनागुणास्ते पुनर्वचनादेव दूरस्थानुवादेनैव द्वादशोपसा-
न्धवत्सामिधेन्यनुवादेन विधोयन्त इतिभट्टमतेन सिद्धान्तितम् । वस्तुतस्तु या तस्य
भगिनीत्वनेन सोदराभावे यो भगिन्यधिकारः संवृष्टधने प्रतीयते । तस्यैवाव्यवहित-
स्थानपत्त्यस्येति वाक्यशेषस्येनायमिति सर्वनाम्ना परामर्शस्तत्र च न कोऽपि विरोधः
चन्द्रिकायामप्येवमेवाङ्गम् ।

अविभक्तापुत्रपतिस्वामिकृत्स्नधनग्रहणन्तु पत्न्या कात्यायनवचनविरुद्धम् ।
यदाह । स्वर्थाते स्वामिनि स्त्री तु ग्रासाच्छादनभागिनी । अविभक्ते धनांश्चन्तु प्राप्नो-
त्वाभरणान्तिकम् ॥ तुशब्दो वाशब्दार्थे तथा चायमर्थः । ग्रासाच्छादनमेव साक्षा-
क्षभते आमरणान्तिकं यावज्जीवं यावता धनेन जीवनं स्त्र्यधिकारिकमावश्यकञ्च कर्म
सिद्ध्यति तावत्तं धनांश्च वा प्राप्नोति । धनांश्चमाभरणान्तिकमित्युक्तेः कृत्स्नधनमवि-
भक्तस्य पत्युर्भूत इति निरस्तम् । न च स्त्रीशब्दश्रवणात् पत्नीत्यतिरिक्तस्त्रीपरमिद-
मपीति वाच्यम् । अविभक्त इति विशेषणार्थक्यापत्तेः । विभक्तेऽपि भर्त्तरि पत्नी-
भिन्नाया अपुत्राया भरणमात्रोक्तेः । अतएव कृतेऽप्यंश इत्यनुवृत्तौ । वृहस्पतिः ।
प्रदद्यात्त्वे पितृश्च क्षेपांश्च वा यदीच्छति । अस्य व्याख्यानं स्मृतिचन्द्रिकायाम् । पितृ-
ग्रहणमशनाच्छादनोपलक्षणार्थन्तत्पर्याप्तं धनन्तस्यान्यादेकं क्षेपांश्च वा स्वतया भर्त्-
शार्हपत्नीत्यतिरिक्तविधवायै आत्रादिस्तद्धनग्राही प्रदद्यात् । एवकारः प्रदानस्याव-
श्यकत्वार्थ इति । एतद्विषयकमेव नारदवचनम् । यावद्यो विधवाः साध्वो ज्येष्ठेन
श्वशुरेण वा । गोत्रजेनापि वान्येन भर्त्तव्याच्छादनाशनैरिति ॥ भर्तृधनग्राहिणेति
सर्वत्र श्रवः । धनग्रहणनिमित्तत्वाद्भरणं स्यात् ।

साध्व्य इत्यनेन सर्वत्र साध्वीनामेव भरणमसाध्वीनान्तु पत्नीनाञ्च न तदपि ।
आश्विन्युरितरासु त्विति प्रागुक्तनारदवचनवाक्यशेषादिभ्यः । अतएव साध्वीना

जीवनायं अमुरादिभिर्दत्तमन्यैरपि दायादैर्नापहरणीयमित्यप्याह बृहस्पतिः । स्वाव-
रादिधनं स्त्रीभ्यो यद्वत्तं अमुरेण तु । न तच्छक्यमपाहृतुं दायादैरिह कर्हिचिदिति ॥

अन्यादृशीनान्तु दत्तमप्यपहर्त्तव्यमित्याह कात्यायनः । भोक्तुमर्हति ज्ञातांशं
गुरुशुश्रूषणे रता । न कुर्याद्यदि शुश्रूषाच्चैलपिखे नियोजयेत् । अपकारक्रियायुक्ता
निर्लज्जा चार्थनाशिका । व्यभिचाररता या च स्त्रीधनं न च सार्हति ॥ नार्हतीत्यनेन
न देयं जीवनपर्याप्तमपि । दत्तमपि च तादृशाः सकाशादपहरणीयमिति द्वयमप्युक्तं
भवति ।

यत्तु तस्मात् स्त्रियोऽनिन्द्रिया अदाया इति श्रुतिवचनं तन्मूलकञ्च अनिन्द्रिया
ह्यदायादाः स्त्रियो नित्यमिति स्थितिरिति मनुवचनं तद्वयमपि यासां ब्रह्मयादिकया
धनग्रहणं नोक्तं तद्विषयमवसेयम् । गौतममिताक्षरायां हरदत्तोऽप्येवमेवाह ।
केचित्तु निरिन्द्रियपदसमभिव्याहाराग्निन्दामात्रपरं तदित्याहुस्तत्र । दायादत्वांशे
निन्दाया निषेधकल्पनावश्यम्भावात् । रागाद्यायग्रहणप्राप्तेर्निष्ठानुवादासम्भवात् । अ-
निन्द्रियत्वन्तु पुम्यारतन्त्रात् कथञ्चिदनुवादः । वस्तुस्वभावविपरीतनिषेधकल्पनस्य
बाधात् । तस्मात् पूर्वोक्त एव समाधिः । पराशरस्मृतिटीकायां विद्यारण्यश्चरणात्तु
श्रुतिमेवैनामन्यथा व्याचक्षुः पत्नीवनग्रहे पत्न्या अंशो नास्तीत्यदायादपदस्यार्थः ।
तत्र हेतुर्नानिन्द्रिया इति इन्द्रियं वै सोमयीय इत सोमेऽप्यनिन्द्रियशब्दप्रयोगात्ततो
निर्गता इति सोमपानानधिष्ठता इति पत्नीवनग्रहप्रशंसेति ॥

इति पत्न्यधिकारविचारः ।

PART II.

पत्न्यभावे दुहितरोऽपुत्रविभक्तासंस्कृष्टिधनभाजः । तथा च मनुः । यथैवात्मा
तथा पुत्रः पुत्रेण दुहिता समा । तस्यामात्मनि तिष्ठन्त्यां कथमन्यो धनं हरेत् ॥
बृहस्पतिरपि । अङ्गादङ्गात्सम्भवति पुत्रवद् दुहिता नृणाम् । तस्मात् पित्रधनन्वन्धः
कथं गृहीत मानव इति ॥ अत्र पुत्रेण समा पुत्रवदिति च साक्षाज्जन्यत्वेऽपि पुत्रे
पित्रवयवानां बाहुल्येन संक्रान्तेर्दुहितरि च पत्नीनां । पुमान् पुंसोऽधिको शुक्रो स्त्री
भवत्यधिको स्त्रियाः । इत्यादिवचनैः स्मृतिस्मार्तवेदे च प्रतिपादनात् पुत्रतुल्यत्वं
दुहितुवक्तमिति ब्रह्मम् । आत्मनि । आत्मा वै जायते पुत्र इत्यात्मभूतपुत्रतुल्याया-
मित्यर्थः । तिष्ठन्त्यामित्यनादरे सप्तमी तामनाद्येत्यर्थः ।

यद्यप्यनेनौरसपुत्राभावे दुहितुर्जन्यग्रहणमित्यत्र न्याय उक्तस्तथापि गौणपुत्र-
पत्न्योरभावे दुहितुर्जन्यग्रहणमिति को न्यायः । उच्यते । नारदेन मन्दानुग्रहाय
सोऽपि स्पर्शोक्तः । यदाह । पुत्राभावे तु दुहिता तुल्यसन्तानदर्शनादिति । विद-
तश्चेदन्तेनैव । पुत्रश्च दुहिता चोभौ पितृसन्तानकारकाविति । अयमाशयः ॥ पुत्र-
दुहितरावुभौ पितुः पौत्रदौहित्राख्यसन्तानकारकावतः सन्तानप्रवर्तकत्वस्य तुल्य-
त्वात् दुहितुरपि पुत्रवदधिकारः । पौत्रदौहित्राख्यसन्तानयोश्च स्वरूपतस्तुल्य

त्वाभावात्कार्यतस्तुल्यत्वमभिप्रेतम् । कार्यमपि गर्भापकरणरिक्थग्रहणक्षमम् पुत्र-
योत्रै ऋतं देयम् । पितामहत्रयमधिकृत्य च । तत्र स्यात्सदृशं स्वात्म्यमित्युः पुत्रस्य
चोभयोरिति । वचनाभ्यां यौत्रे सति दौहित्रस्य तदनधिकारात् । तेनादृष्टमत्र कार्यं
आज्ञाकर्तव्यम् । पूर्व्वेधान्तु खधाकारे यौत्रा दौहित्रका मता इति विष्णुतेः । एवञ्च
दृष्टादृष्टोपकारकस्वसन्तानमुखेनोपकारकपुत्रात् केवलादृष्टोपकारकस्वसन्तानमुखेनो-
पकारिका दुहिता न्यूना । न चैवम्यत्न्यपेक्षया प्रत्यासन्न जन्मा दुहितेति पत्नीतः
पूर्व्वं सैव धनमर्हतीति वाच्यम् । यतः सहाधिकारेणाभिहोत्रादिवैदिककर्म्मोपका-
रिका कामात्यपुरुषार्थसाधनतया सन्तानसाधनतया च दृष्टादृष्टोपकारकर्त्री देहाङ्ग-
संस्तुता पत्न्येव ततोऽधिका । ततश्च पुत्राभाव इति पल्लभावाप्यपलक्ष्यं प्राग्लि-
खितविष्णुवचनादस्माच्च योगीश्वरवचनात् ।

यद्यपि पुत्रकर्तृकआज्ञे सम्पदानतया स्वयमेवादृष्टोपकारकः पिता दौहित्रपे-
क्षया प्रत्यासन्न इति पिता हरेदपुत्रस्य रिक्थमिति वचनस्यावसर उच्यते दुहितुः
प्राक् । तथापि तस्यामात्मनि तिष्ठन्त्यामित्यनेन शरीरप्रत्यासत्त्या सैवाग्रेसरीति
तदभावे तद्वचनस्यावसरः । वा शब्दोपादानेन तस्य क्रमपरत्वाभावात् ।

2. जीमूतवाहनस्तु दुहितुरधिकारे सन्तानकारकत्वस्य हेतोर्निर्देशात्स-
न्तानस्य च पित्रदृष्ट्येवोपकारकत्वादपित्रदृष्टस्यीनुपकारकत्वेनान्यसन्तानादसन्तानाच्चा-
विशेषात् पुत्रवती सम्भावितपुत्रा वा दुहिता धनाधिकारिणी । विधवात्वबन्धात्-
दुहितृप्रसूत्वादिना विपर्य्यस्तपुत्रा पुनर्गर्भाधिकारिण्येवेति दौक्षितमतमादरणीय-
मित्याह ।

तदपि चिन्त्यम् । प्राथमिककन्याधिकारस्य । अपुत्रभृतस्य कुमारी ऋक्थं
गृहीयात्तदभावे चोद्वेति पराशरवचनात् कन्याभ्यश्च पितृव्यादिति देवत्ववचनाच्च
तेनैव प्रथमं कन्यैवैका पितृधनाधिकारिणीत्यनेन ग्रन्थेनाभिधानात् तदानीं च पुत्रस-
म्भावना निश्चयाभावात् । हेतुनिर्देशस्य प्रत्यासत्त्यतिशयमात्रप्रदर्शकतयाप्युपपत्तेः ।
किञ्च । स्वयमेव कन्याया असम्भवे सम्भावितपुत्रायः पुत्रवत्याश्चाधिकार इति
वदन् हेतुर्थमभिचारितां दर्शयति । तस्मादस्मदुक्तदोषैव प्रत्यासत्त्यर्थतया हेतु-
र्थाख्येयः ।

3. धारेश्वरदेवस्वामिदेवशतप्रभृतयस्तु । पिता हरेदपुत्रस्येवादि वचनविरोध-
परिहाराय दुहित्रधिकारप्रतिपादकवचसां पुत्रिकाविषयत्वं तदभावे तु पित्रा-
दयमेव यथोक्तक्रमेणाधिकारिण इत्याहुः । तदतिपेक्षणम् । पुत्रिकाया औारसे
धर्मपत्नीजस्तत्समः पुत्रिकामृतः । तृतीयः पुत्रिकापुत्रः विज्ञायत इति योगीश्वर-
वशिष्ठादिवचनैर्गौणपुत्रकोटिनिविष्टायाः क्षेत्रजादिपुत्रवत् न भ्रातरो न पितरः
पुत्रा रिक्थहराः पितुरिति गौणपुत्रविषयेण मानवेन वचनेन पत्न्यां सत्यामपि रिक्थ-
ग्राहिण्यात्तदभावे रिक्थग्राहित्वं दृष्ट्वापूयिकयैव सिद्धमिति वचनारम्भानर्थक्यापत्तेः ।
दुहितृमात्रवाचकानां वचनानां विना कारणं विशेषपरत्वकल्पनानुपपत्तेश्च । किञ्च ।

भवन्मते अङ्गादङ्गात्सम्भवतीत्यादिना पुत्रिकाविषयेण वचसा पुत्रिकाया धनग्रहणे उक्ते पुनः । सदृशी सदृशेनोऽऽ साध्वी शुश्रूषये रता । कृताऽकृता वा पुत्रस्य पितुर्जनहरी तु सा ॥ इत्यनेन पुनर्जनहरत्वप्रतिपादनत्वेनैव मुनिना क्रियमाणां विवरणमात्रतयाऽपुनरुक्तार्थं स्यात् । सामान्यविशेषविषयतया तु स्पष्टमेवापौनरुक्त्यम् । सदृशी पितृसवर्णा । सदृशेन सर्वर्णेनोऽऽति प्रकृष्टापकृष्टवर्णसम्बन्धनिरासाय । तज्जातस्योत्तमवर्णमातामहश्चाद्वादिनिषेधादिति जीमतवाहनेऽक्तमनादेशम् । ऊढापदैर्नैवाधमवर्णसम्बन्धनिरासात् । न ह्यधमवर्णोऽऽत्वमुत्तमवर्णायाः सम्भवति । तस्मादुत्तमवर्णनिरासार्थमेव सदृशग्रहणम् । ननु नारदेन कन्यारूपाणां पितृभ्रातृरहितानां सर्वासामेव दुहितृणां पितृधनाप्राप्तिः संसर्गतोऽभिहिता । यथाह । स्यात्तु चेत् दुहिता तस्याः पित्योऽभिरक्षे मतः । आसंस्काराद्देहागम्यरतो विभ्रयात्पतिरिति ॥ तस्या इति पतिपुत्रविहीनपत्नीमधिकृत्याह । तेन तादृश्या यदि दुहिता विद्यते तस्याभिरक्षणिमित्तमात्रपित्योऽशक्तत्वात् विवाहसंस्काराद्भरणार्थमेव सा पितृधनभागं हरेत्यरतो विवाहादूर्ध्वं पतिस्तां विभ्रयात् । तेन तावत्कालभरणावश्विष्टमपि ततो गृह्णीयात् । यथेष्टविनियोगार्थन्तु कन्यायाः पितृधनग्रहणं दूरापास्तमेव । ततश्चास्यापवादकानि दुहितुः पितृधनप्राप्तिप्रतिपादकानि वचनानि सर्वाणि पुत्रिकाविषयाख्येव वाच्यानि । अन्यथा द्वयोरपि दुहितृसामान्यविषयतयेत्युक्तोपवादत्वानुपपत्तेः । तस्माद्भारेणरादिमतमनुमन्तव्यमिति चेन्न । स्यादेवं यदि नारदवचनं विभक्तविषयं स्यात् । पौर्वोपर्यर्थलोचनया संकृष्टाविभक्तविषयन्तत् स्फुटमवगम्यते । ततश्च विभक्तविषये दुहितृमात्रस्य पत्न्यभावे पितृधने ग्रहणप्रतिपादकानि प्रापकाख्येव नापवादकानीति न पुत्रिकामात्रविषयत्वे तेषां किमपि बीजम्पश्यामः । यत् सकलपितृधनग्रहणाधिकारप्रतिपादकतया कन्याभ्य इत्यादिदेवत्ववचनं जीमूतवाहनेनोपन्यस्तं तत् पूर्वोपरविरुद्धम् । जीवद्भिभागे कन्याभ्यः विवाहमात्रोपयुक्तधने तस्य प्रमाणतयोपन्यासात् । तदपि चास्माभिः प्राङ्निरस्तम् ।

4. दुहितृष्वपि प्रथममप्रप्ताः पितृधनं गृह्णीयुस्तदभावे प्रप्ताः तासामपि मध्ये प्रागप्रतिष्ठितास्तदभावे प्रतिष्ठिता सर्वाः समानरूपास्तु समं विभक्त्य गृह्णीयुरित्यर्थः सिद्धम् । तथा च कात्यायनः । पत्नी पत्युर्जनहरी या स्यादथभिचारिणी । तदभावे तु दुहिता यद्यनूढा भवेत् तदेति । गौतमः स्त्रीधनं दुहितृव्यामप्रप्तानामप्रतिष्ठितानाञ्चेति । अप्रतिष्ठिता निर्धनाः । यद्यपि स्त्रीधनमित्युक्तं तथापि तुल्यन्यायतया पितृधनविषयमप्येतत् । बन्धत्वादिना सन्तानरहिता प्रतिष्ठितेति तु न युक्तम् । तस्याः सन्तानमुखेनादृष्टोपकाराभावेन धनहारित्वा-योगात् ।

5. सदृशी सदृशेनोऽऽति प्राक्पठितं वृहस्पतिवचनं स्मृतिचण्डिकाकार इत्यं व्याचक्षौ । अत्राद्यानि चत्वारि विशेषणानि पक्षेण ऊर्ध्वमर्थग्राहिणीदुहितृविवक्षाभिः । ततः प्राग्धनग्राहिणीदुहितृविशेषणे हे अवशिष्टे । कृताऽकृता वेत्यत्र

पुत्रिकेति विशेष्याध्याहारः । इतरत्र दुहितेति विशेष्याध्याहारः । वाशब्दश्च
व्यवस्थितविकल्पार्थः । एवञ्चायमर्थः । सौरसपुत्रविहीनस्य पितुर्जनं द्विविधापि
पुत्रिका पत्न्याः पूर्वं गृह्णीयात् । सर्वार्थादिविशेषणोपेता तु दुहिता तत ऊर्ध्वमिति ।
एवञ्च पत्न्या ऊर्ध्वं सर्वार्थादिविशेषणोपेतप्रतिष्ठिताऽप्रतिष्ठितोऽनूढानां दुहितृणां
समवाये प्रागनुष्ठेयं गृह्णाति पित्रा भर्त्सयित्वात् । तदभावे ऊढाऽप्रतिष्ठिता । भर्त्रा
भर्त्सयित्वेऽपि भर्तुर्भरण्यासामर्थ्येनाप्रतिष्ठितत्वात् । तदभावे प्रागुक्त्या प्रत्यासत्त्या
सर्वार्थादिविशेषणोपेता प्रतिष्ठितापि धनं गृह्णाति ।

अन्यैस्तु कृतेति पुत्रिकापरमकृतेति दुहितृमात्रपरमभ्युपेत्य वाशब्दस्य नास्या-
परत्वमाख्यायाखिलं दुहितृमात्रविषयं विशेष्याध्याहारमन्तरैरेव व्याख्यातम् । सेत्वेनेन
दुहितृमात्रपरामर्शात् ।

6. दुहितर इति बहुवचनं सजातीयानां समांशोऽसमानजातीयानां वर्ण-
क्रमेण विशेषांश इति प्रतिपादनाय ।

इति दुहितुरधिकारः ।

PART III.

1. दुहितुरभावे दौहित्रः । अशब्दादनुक्तसमुच्चयार्थात् । तथा च विष्णुः ।
अपुत्रपौत्रसन्ताने दौहित्रा धनमाप्नुयुः । पूर्वेष्वान्तु स्वधाकारे पौत्रदौहित्रकाः
समाः ॥ अपुत्रपौत्रेति दुहितृपर्यन्ताभावोपपन्नम् । मरुरपि । अकृता वा कृता
वापि यं विन्देत्सदृशात्सुतम् । पौत्री मातामहस्तेन दद्यात्पिण्डं हरेद्धनमिति ॥ पौत्री-
त्वेनेन यथा पुत्राभावे पौत्रः पितामहधनाधिकारी तथा दौहित्रभावे दौहित्र इत्यु-
क्तम् । दृश्यतिरपि । यथा पिण्डधने स्वाभ्यं तस्याः सत्सुपि बन्धुषु । तथैव तत्सुतो-
ऽपि मातृमातामहे धने ॥ यथा येन दौहित्रदेयपिण्डेन दुहिता पिण्डधनाधिका-
रिणी तथैव तेनैव पिण्डदानेन दुहितृसुतोऽपि मातामहधने स्वामी सत्सुपि बन्धुषु
पित्रादिविषयार्थः ।

2. न च पुत्रिकापुत्रविषयमिदं वचनम् । तस्या इति तत्सुत इति च
सर्वनामभ्यामकृतदुहितृमात्रपरामर्शात् । अतएव मरुरपि दौहित्रमात्रस्यैव माता-
महधनाधिकारं दर्शयति । दौहित्रो ह्यखिलं रिक्त्वमपुत्रस्य पितुर्हरेत् । स एव
दद्याद् दौ पिण्डौ पित्रे मातामहाय च ॥ पौत्रदौहित्रयोर्लोके न विशेषोऽस्ति
धर्मतः । तयोर्हि मातापितरौ सम्भूतौ तस्य देहत इति । पितुरिति मातुः पितु-
रिति व्याख्येयम् । अतएवाये मातामहाय चेत्वाह । अथवा यथा स स्वपितुरखिलं
रिक्वं गृह्णाति तथाऽपुत्रस्य मातामहस्यापि । स्वयमेव तत्पुत्रकार्यकारित्वात् । तदे-
वाह स एवेति । स्वपित्रे मातामहाय चेत्त्वर्थः । मातापितराविति च न यथाक्रम-
मन्वयः । किन्तु । पौत्रस्य पिता दौहित्रस्य माता धनस्वामिनो देहतः सम्भूताविति
यथायोग्यम् ।

३. केचिदपुत्रपौत्रेति यथाश्रुतविष्णुवचनात्पत्नीदुहित्तः प्राग् दौहित्रस्य धनाधिकारमाज्जस्योगीश्वरविरोधात्तथैव तत्सुतोऽपीति दृश्यस्यतिवचनेऽपि दुहित्तत्तस्य जघन्यभावावगर्भे हेयम् ।

इति दौहित्राधिकारः ।

PART IV.

१. दौहित्राभावे पितरौ धनभाजौ ।

२. अत्र मिताक्षरा । यद्यपि युगपदधिकारवचनतायां इन्द्रस्मरणात्तदपवादत्वाच्चैकशेषस्य मातापित्रोर्जनग्रहणे क्रमो न प्रतीयते । तथापि विग्रहवाक्ये मातृशब्दस्य पूर्वनिपातादेकशेषाभावपक्षे च मातापितरावित्त्र मातृशब्दस्य पूर्वश्रवणात्पाठक्रमोदेवार्थक्रमोऽवगम्यमानः क्रमाकाङ्क्षायां सत्यां न परित्यक्तुमर्ह इति प्रथमं माताऽपुत्रपुत्रधनभाक् तदभावे पिता । किञ्च पिता पुत्रान्तरेष्वपि साधारणो मातात्वस्यैवासाधारणीति प्रत्यासत्त्यतिशयादनन्तरः सपिण्डाद्यस्तस्य तस्य धनम्भवेदिति मनुना प्रत्यासत्त्यतिशयेन धनग्रहणाधिकारस्य विनिगमितत्वात्सपिण्डसमानोदकादिष्वेव विनिगमनाकाङ्क्षायामेतद्वचनप्रवृत्तेरत्राप्यदण्डवारितत्वादिति ।

३. अत्र स्मृतिचन्द्रिकाकारः प्रगल्भते । सारस्वतौभवत इत्यत्रोत्पत्तिवाक्ये क्रमावगत्यभावेन याज्यक्रमेण प्रधानानुष्ठानक्रमः पञ्चमे निरूपितो नत्वेकशेषत एव काचित्क्रमावगतिरुपपादिता । तद्वदत्रापि क्रमार्थमन्यत्रमात्रमन्वेष्टव्यमिति तदभाव इतरैतरयोगस्य इन्द्रवदेकशेषेऽप्यवगतेर्विमन्वेयैव पित्रोस्तुल्यतया धनग्रहणं युक्तम् । यत्तु पिता सपत्नीपुत्रेष्वपि साधारणो माता त्वसाधारणेति प्रत्यासत्त्यतिशयात्तस्या एव पित्तः प्राग्धनग्रहणस्याभ्युक्त्युक्तान्तदप्यन्याय्यम् । नहि जननीजनकयोर्जन्यं प्रति प्रत्यासत्तिरतन्ममस्ति । पुत्रान्तरजनकस्याप्येतज्जनकताया मातृतुल्यत्वात् । नहि जनकतापि व्यासव्यवर्तिनी । न च पितृहृत्तन्ममं भिन्नोदरेष्वपि संक्रामति । मातृहृत्तन्मे तत्सहेदरेष्वेवेति मातुरेव धनग्रहणमिति बाध्यम् । तस्याः प्रत्यासत्तेर्भातृमगिनोधनाधिकारविनिगमकतया जनकाज्जनन्या धनग्रहणविनिगमकत्वासम्भवात् । इन्द्रस्थानीयैकशेषास्तुल्यतावगतौ प्रत्यासत्तेरप्रयोगकत्वाच्च । सत्यां हि क्रमाकाङ्क्षायां सा क्रमनियामका न त्वसत्त्वामपि । तस्मात् पित्रोस्तुल्यत्वाभ्यामिभ्यैवानपत्यविधुरपुत्रधनग्रहणमिति श्रीकारस्तदयुक्तम् । पिता हरेदपुत्रस्य रिक्तं । स्वर्थात्तस्य ह्यपुत्रस्य माता दायमवाप्नुयादित्यादिवचनेषु पितुर्मातुश्च निरपेक्षस्वाभ्यप्रतीतेर्युगपद् ग्रहणायोगात् । ग्रीह्यवयोर्निरपेक्षसाधनत्वप्रतीतौ भिन्नत्वायोगवत् । केचित्तु मातुर्गर्भधारणपोषणादिनात्मन्तोपकारित्वात् सहजन्तु पितुर्माता गौरवेणातिरिच्यते इत्यादिस्मरणाच्च प्रथमं मातुर्धनाधिकारमाज्जस्यदपि तुच्छम् । पितुरपि संस्कारवृत्तिसम्पादनादिना बज्जधा संविधात्वात्तयोरपि पिता ज्येष्ठान् वीजप्राधान्यदर्शनादित्यादिस्मरणेन सत्यतिपक्षत्वाच्च । गौरवमात्रस्य धनग्रहणप्रयोगकत्वे । उत्पा-

दक्षत्रक्षदाचोर्गरीयान् ब्रह्मदः पितेत्यादिसंख्याच्च पित्रतोऽपि पूर्वमाचार्यस्याधिका-
रापत्तेर्भाट्टभाट्टपुत्रयोश्च सतोः पितामहपितृव्यादीनामेव प्रागधिकारापत्तेः ।

4. जीसुतवाहनत्तु । पितरावित्यस्मात्पितृक्रम एवावगम्यते । तथा हि पित्र-
प्रातिपदिकाप्रथमं पितुरवगतौ द्विवचनबलेन तेनैकशेषकल्पनायां सख्यैकशेषासम्भवे
विव्यामन्वादिवचनसंवादाच्च विख्यैकशेषत्वनिश्चये मातुरवगमात् । अतः क्रमज्ञानं
क्रमाभिधानव्याप्तं क्रमाभिधाने व्यापके निवर्त्तमाने निवर्त्तत इति श्रीकरोक्तिर्विप-
रीतक्रमोक्तिश्च विज्ञानेश्वरीया न युक्तेत्याह ।

5. तस्मान्नैयायिकक्रमस्यात्राव्यवस्थितत्वाद् दृष्टद्विव्यावचनोक्तेः क्रम आदर-
णीयः । तत्र च दुहितृगामीत्युक्ता तदभावे पित्रगामि तदभावे मातृगामीत्युक्तम् ।
मिताक्षराकारस्य तु प्रथमत एव तादृशपाठेनैव दृष्टद्विव्यावचनं लिखितस्तद्विरुद्धन्याय-
मात्रावगमनेन पितरावित्यत्र पित्रतः प्राज्ञातुः पुत्रधनाधिकारं सिद्धान्तयतो महत्येव
हृदयग्रन्थता प्रतिभाति । दौहित्रस्यापि दुहितृकोटिनिविष्टत्वाद् दृष्टद्विव्याव-
पृथगनभिधानं तेन दौहित्रभावेऽपि दुहितृभावेनोपलब्धत इति मन्तव्यम् । तस्मात्
स्मृतिचन्द्रिकामदनरत्नकारकल्पतरुत्वाकरपारिजातकारप्रभृतीनां बहूनां पितुरभावे
मातुः पुत्रधनाधिकार इत्येव सिद्धान्तः ।

वाचस्पतिना तु तदभावे मातृगामि तदभावे पित्रगामीति दृष्टद्विव्यावचनं
पठित्वा यथा मिताक्षरायामेव सिद्धान्तितं तत्तु कुत्रापि तदतिरिक्तग्रन्थे तथा
पाठस्यालिखनाद् भ्रान्तिविलसितमेव ।

6. वियह्वाक्ये मातृशब्दस्य पूर्वनिपातादित्यपि मिताक्षराग्रन्थो दुष्टः
वियह्वाक्ये पूर्वनिपातनियमाभावात् समासे हि तन्नियमः शाब्दिकैः स्मर्यते न तु
वियह्वाक्य इत्यादिविज्ञानेश्वरोक्तन्याये यद्वचनमन्यैकत्वं तत्परिहाराय पराक्रम्यते ।
युगपदधिकरणवचनता तावत् इन्द्रस्य वचनाधिकरणे वार्तिके तन्वरत्ने च महता
प्रबन्धेन निरस्ता । इतरेतरयोगोऽपि पदान्तरान्वये इन्द्राच्छब्दरीत्या प्रतीयते तेन
पितरौ धनभाजावित्यनेन युगपदन्वयेऽपि वस्तुगत्वा तयोः क्रमेऽपि न वाक्यदोषः ।
सर्वैश्च श्रीकरमिश्रादिभिस्तदभ्युपगमात् सर्वं समाधेयमिदम् । एकशेषाभावपक्षे च
मातापितरौ मातरपितरावित्यत्र मातृशब्दस्य पूर्वश्रवणात् समासैकशेषयोश्च तुल्य-
प्रतीतिजनकत्वाभावे विकल्पायोगादत्रापि तथा प्रतीतिरभ्युपेया वियह्वाक्येऽपि
पूर्वनिपातनियमो नानुशासनसिद्धस्तथापि व्याख्यातसम्प्रदायसिद्धोऽस्येव । न हि
कोपि पिता च माता च पितराविति वियह्मं दृश्यते किन्तु माता पिता स्वपितरा-
वित्येवेत्यनुरपि विशेषोऽध्यवसायकर इति न्यायेन तस्यापि विनिगमकता सम्भवती-
त्यनेनाशयेन तथोक्तेः सम्भवः ।

पितुः पुत्रान्तरसाधारण्यं मातुस्त्वसाधारण्यमिति प्रत्यासत्तिरपि अनकताया
अन्यासव्यवस्थित्येऽपि तदभिप्रायेणैवाहता । साधारण्यासाधारण्ये हि सम्बन्धकृते
अपदेशप्रतीतिविजम्बाविजम्बने भवत एव तथानुभवात् ।

वाक्यार्थबोधे क्रामाभावे किमिति वस्तुक्रम आश्रीयत इति श्रीकरोत्तिस्तु वचनान्तरे निरपेक्षस्यावगत्या क्रामापेक्षया स्मृतिचम्रिकाकारादिभिरप्यवश्यं निरस्तैव।

7. रुद्धिद्विगुणवचनविरोधः परन्दुबन्तरोऽवशिष्यते तत्रापि यथाशक्ति प्रतिविधीयते । गौरवप्रतिपादकानि वचनानि तावन्मातापित्रिविधयाणि विरुद्धानि दृश्यन्ते । तानि विषयव्यवस्थयावश्यमविरोधमेयानि । तथा हि । उपाध्यायादृशाचार्य्य आचार्याणां शतम्पिता । सहस्रन्तु पितुर्माता गौरवेणातिरिच्यते ॥ गर्भधारणपीडाभ्यान्तेन माता गरीयसीत्यादीनि मातुरभ्यर्हितत्वप्रतिपादकानि । तयोऽपि पिता श्रेयान् बीजप्राधान्यदर्शनादित्यादिस्मृतिवचनानि । पित्राक्षया परमुरामेज मातुः शिरश्चिह्नम् । रघुनाथेन कौशल्याया निवारितेनापि पित्राक्षया राज्यं विहाय वनवास आदृत इत्यादिपौराणिकान्यर्थदर्शनानि च पित्रूप्यताप्रत्यायकानि ।

तेषाञ्चायमविरोधप्रकारः । यः पिता महागुणलक्षणोपेतः स गुर्वर्थः क्रियाः कृत्वा वेदमस्मै प्रयच्छतीत्यादियोगोन्मरादिवचोभिः प्रतिपादितो माता च तदाश्चावश्वर्चित्वादिपतिव्रतात्प्रयोजकसमस्तलक्षणरहिता । तयोर्मध्ये मातुरपेक्षया पितैवाधिकाभ्यर्हितः । यच्च तु माताबन्ध्यादिवत्समस्तपतिव्रतागुणोपेता पिता तु जन्ममात्रप्रदः तत्र मातैव पितुरपेक्षयाभ्यधिकमान्या । चिरकारिकोपाख्यानादौ महाभारतादप्येवमुपाख्यानसंसारसादयमर्थ उक्तोच्यते । तदत्रापि मन्वादिवचनेष्वपुत्रपुत्रधनग्रहणाधिकारः क्वचित् मातुः प्रथमं क्वचित्पितुः प्रतीयमान एवमेव व्यवस्थापयितुमर्हः । तथा हि । अनपत्यस्य पुत्रस्य माता दायमवाप्नुयात् । मातर्यपि च कृत्तायां पितुर्माता हरेद्वनमिति मनुः । भार्या सुतविहीनस्य तनयस्य मृतस्य च । माता रिक्थहरी क्षेया आता वा तदनुक्षेयेति रुद्धस्पतिः । पुनर्मनुरेव । पिता हरेदपुत्रस्य रिक्थं आतर एव वेति ॥ तदभावे पिता तदभावे मातेति प्राग्दर्शितं रुद्धिद्विगुणवचनादि । योगोन्मरवचने तु पितरावित्यत्र विज्ञानेन्मरोक्तरीत्या प्राज्ञाता तदनु पिता । अन्यमते सम्भयविभागः पितुर्वा प्राथम्यमिति विप्रतिपत्तौ पितुरधिकमान्या या माता सा पितुरपेक्षया प्रथमाधिकारिणी । या तु पितुरपेक्षया न्यूनमानभावा सा पितुः पश्चात् । युक्तश्चेतत् । रुद्धादिसन्निधानमकुर्वन्तः पितुरपेक्षया मातुरेवाधिकोपकारकत्वाद्जनग्रहणम् । रुद्धादिसन्निधानकर्तुं तस्य यावज्जीवन्मरणपोषणादिनातिश्रितोपकारकस्य धनग्रहणमिति सर्वस्मृतीनां सर्वनिबन्धानां सादुःखता भवतीत्यादि सुधीभिर्विभाषणम् ।

PART V.

1. पित्रोरभावे आतरो धनभाजः । यद्यप्यपुत्रधनं आह्वगामि अपुत्रस्य सन्मातस्य आह्वगामि त्रयं तदभावे पितरपुत्रित्वाद्विगुणपैठीनसिखचनयोः । आतर एवेति मनोश्च पित्रतः प्राक् आह्वयां धनग्रहणं प्रतीयते । मातर्यपि च कृत्तायां पितुर्माता हरेद्वनमिति च मनुवचने आहतः प्राक् पितामह्णा । तथापि जनपरयोगोन्मर-

वृद्धिबन्धुवचनाविरोधाय तेषां धनाधिकारमात्रपरत्वमेतत्क्रमाविरोधबन्धुवचनार्थमेव मनुना आतर एव वेति पैठीनसिनापि ज्येष्ठा वा पत्नीति वाशब्दः प्रयुक्तोऽन्यथा तुल्य-
कक्ष्याधिकारिषु तत्प्रयोगोऽत्यन्तमयुक्तः स्यादिति मिताक्षराकारादयो बहवः ।

कक्ष्यतदकारण्यं पत्नीभाटस्थले आजाद्यधिकारिणी साध्वी पत्नी प्रथमाधिका-
रिणी तदन्या तु भाटपिठतोऽनन्तरम् । पिठभाटस्थले तु पिठपितामहाद्युपाजितं
यदिभागेन पुत्रे संक्रान्तधनन्तस्मिन्नपुत्रे प्रमीते पित्रोः पिठप्रत्याविरोधेन यत्तेनोपाजि-
तन्तत्पित्रोः सतोऽपि भाट्यामेवेत्याह ।

मम तु प्रतिभाति मातर्यपि च वृत्तायामिति मनुवाक्ये । तदभावे मातापित-
राविति शब्दपैठीनसिचनयोः । ततो दायमपुत्रस्य विभजेरन् सहेदराः । तुल्या
दुहितरो वापि धियमात्रः पितापि वा । सवर्णा आतरो माता भार्या चेति यथा
क्रमम् । तेषामभावे गृहीयुः कुल्यानां सहवासिन इति देववचने । सर्वत्रापि
वृत्तायां तदभावे यथाक्रममित्यादिपदैः क्रमप्रतीतेर्योगीश्वरवृद्धिबन्धुवचनयोरेव
क्रमपरत्वमितरेषान्वधिकारमात्रपरत्वेन तदविरोधेन तत्तत्स्थाननिवेशेऽप्युक्ततिरिति
समाधिर्नैव साधुः किन्तु क्षेत्रजादिपुत्रस्थले यथा स्मृतिवचनक्रमविपर्ययांस चौर-
सानुकूल्यप्रातिकूल्यगुणवत्त्वागुणवत्त्वादिभिर्व्यवस्थापितस्तथात्रापि दायभागप्रकारणे
पुत्रादीनाम्पुत्राद्युपकारकत्वकीर्तनस्य गुणवत्त्वादिक्तीर्तनस्य वानन्यप्रयोजनत्वात्प्रत्या-
सन्नितारतम्यवत् । धनस्वानुपकारातिशयानतिशयगुणवत्त्वागुणवत्त्वादिभिर्यथावचनं
सर्वत्रापि क्रमविपर्ययांसः समाधेयोऽन्ये तु समाधयः कुशकाशावकलननमात्रतुल्या
अनुपादेया इति । एवमग्रेऽपीति सर्वं सुस्थम् ।

२. भाटव्यपि प्रथमं सहेदराः । अनन्तरः सपिण्डाद्यस्तस्य तस्य धनम्भवे-
दिति मनुना । बहवो ज्ञातयो यस्य सकुल्या बान्धवास्तथा । यस्यासन्नतरलोकां
शोऽनपत्यधनं हरेदिति ॥ वृद्धस्पतिना च । प्रत्यासन्नतिशयस्यैवासति विश्लेषवचने
विनिगमकत्वेनेत्ते । भिन्नोदराणां माटव्यतविप्रकर्षात् । आतर इति सामान्य-
ग्रहणात्सोदराभावे भिन्नोदराः । इदमेव व्यक्तमुक्तं संग्रहकारेण । सोदर्याः सन्धसो-
दर्या आतरो द्विविधा यदि । विद्यमानेऽप्यसोदर्ये सोदर्या धनभागिन इति ।

इति आजधिकारः ।

PART VI.

१. आजभावे तत्सुताः भाटसुता धनभाजः । न च तथा तत्सुता इति तथा-
शब्देन भाटभाटपुत्रयोः सादृश्यप्रतिपादनात् । अनेकपिठकाख्यां तु पिठतो भाग-
कक्ष्यनेतिवचनाज्ञानयोः पित्रभावे विभज्य धनग्रहणमस्त्विति वाच्यं । विष्णुवचनाविरो-
धात् तथाशब्दस्य चशब्दार्थत्वात् । अन्यथा तथापदस्य पूर्वत्रायप्यन्यसम्भवेन पित्रो-
र्भाट्याश्च विभज्यग्रहणमित्यपि कुतो न स्यात् । तच्चैद्विष्णुवचनविरोधान्नैतदुच्यते
शोऽत्रापि तुल्यः । अनेकपिठकाख्यानितिवचने आजभावे तेषामधिकारे सम्यगे

कश्चिन्निदप्युपचे आतरि प्रमीते विद्यमानानां आहृणां सर्वेष्वान्तरङ्गसम्बन्धे जाते तद्विभागात् प्रागेव तन्मध्येऽपि यदि कश्चिन्मृतस्तदा तत्पुत्राणाम्पितृत्वैः सह समविभागे प्रसक्ते स्वपितृविभागमेव ते विभज्य गृह्णीयुर्न सर्वे पितृव्यसममित्येतदर्थम् । आहृतस्ये तत्पुत्राणाम्पितृत्वधनेऽनधिकारात् । पूर्वभावे परः पर इति योगीश्वरवचनात्तदभावे आहृतपुत्रगामीति विष्णुवचने आहृतपरामर्शकतत्पदेन आत्रभावाभिधानाच्च ।

२. आहृतपुत्रेष्वपि प्रत्यासत्त्यतिशयात्पूर्व्यं सोदरआहृतजास्तदभावे भिन्नोदरजाः । युक्तश्चेतत् । असोदरआहृतपुत्रो हि धनिनो मातरं विहाय स्वपितामहीविशिष्टस्य धनिपितुः पिण्डन्ददातीति सोदरआहृतपुत्राण्यन्यस्तदनन्तरमेवाधिकारीति । न च सपत्नीकत्वे त्रयाणां आहृतदेवतात्वात्सपत्नमात्रादीनामप्यस्ति तत्रानुप्रवेश इति वाच्यम् । मात्रादिशब्दानां स्वजननीपितृजननीपितामहजननीष्वेव मुख्यत्वात्तेनैव च रूपेण आहृतानुप्रवेशस्मरणात् । यथा स्मरन्ति । स्वेन भर्ता सह आहृतं माता मुक्ते स्वधाकरम् । पितामहो च स्वेनैव स्वेनैव प्रपितामहीति ॥ सपत्नमात्रादीनामनुप्रवेशः प्रवृत्त । अपुत्रा ये मृताः केचित्पुरुषा वा स्त्रियोऽपि वा । तेषामपि च देयं स्यादेको-
द्विष्टम् पार्ष्वयमिति स्मरणादायति । किञ्च । सपत्नीकदेवताकआहृतविधेः पुत्रादि-
सर्वजनाधिकारिकात्सपत्नमात्रादीनां स्वानित्यत्वान्नित्यसंयोगाविरोधान्मात्रादि-
सापेक्षमेव सपत्नीकत्वविधायकत्वं युक्तं ।

इति आतुपुत्राधिकारः ।

PART VII.

१. आहृतपुत्रभावे गोत्रजाः । पूर्वोक्तपितृआहृततत्सुतभिन्ना गृह्णन्ते गोवर्षी-
वर्द्धन्यात् ।

ते च पितामही स्वपितृजाः समानोदकाश्च । तत्र प्रथमम्पितामही धनभाक् । मा-
तर्यपि च दत्तायां पितुर्माता हरेऽङ्गमिति मानवान्मात्रनन्तरम्पितामह्या धनग्रहणे
प्रसक्ते पित्रादीनां आहृतसुतपर्यन्तानाम्पितृत्वमात्रमन्तस्तदननुप्रवेशासम्भवादुत्कर्षेऽप्यग्रे
तदुत्पादनकारणभावात्तदनन्तरम्पितामहादयोऽन्ये गोत्रजा इति विज्ञानेश्वरः ।

२. अत्र स्मृतिचन्द्रिकायाङ्गोत्रजा इत्यत्र स्वरूपैकश्रेयेण पुमांस एव गोत्रजा
न तु स्त्रीरूपाः । विरूपैकश्रेवो हि कुण्डुटावानय मिथुनश्चरित्र्याम इत्यादि वाक्यश्रे-
षादिसमभिव्याहारादिप्रमाणाभ्यान्तरावगततात्पर्यग्रहनिबन्धनो न चात्र प्रमाणमस्ति ।
प्रवृत्त आहृतसुतादिसाहचर्यं पुङ्गोत्रजग्रहण एव साधकमस्ति । किञ्च पत्नीदुहि-
त्रादीनां श्रद्धयाहिक्त्वा धनग्रहणाधिकारोक्तस्तस्मात् स्त्रियो निरिन्द्रिया अदायादा
इति श्रुतेरस्तु तद्यतिरित्तविषयता गोत्रजादिष्वेते तद्विरोधाद्विरूपैकश्रेवैकत्वमेव
हातुमर्हं । अतएव जीवतुत्रेभ्यः पिता दायं विभजेदित्वापत्तमस्तत्रयाचक्षाणेन
तदुन्वाच्यकारेण पुत्रेभ्य एव दायं विभजेत न स्त्रीभ्योदुहितृभ्य इत्युक्तोक्तं यद्यपि
आहृतपुत्रौ स्वदुहितृभ्यामिति पाणिनिस्मरणात्पुत्रेभ्य इत्यत्र पुत्राश्च दुहितरश्चेति

विष्टा विष्टपैकश्रेवेष्ट दुष्टिद्वयामप्यत्र पुत्रेऽनुप्रवेशः शक्यते कर्तुं न तथापि पुमांश्चो दा-
यादा न क्षियः । तस्मात् स्त्रियोर्निर्दिष्ट्या अदायादा इति श्रुतेरिति श्रुतिविरोधात्ता-
त्पर्ययाहकमानाभावाच्च विष्टपैकश्रेवेऽनुप्रविष्टोऽप्यत्र न याह्य इति भाष्यकाराभिप्रायः ।

जीमूतवाहनोऽपि याज्ञवल्क्येन च पित्रादिदौहित्रस्यापि तद्गोत्रजातस्य पित्र-
दानानन्तर्यक्रमेणाधिकारप्रतिपत्त्यर्थं गोत्रजपदग्रहणं कृतम् । सपिण्डस्त्रीयाम्
श्रुदासार्थं तासामतद्गोत्रजातत्वात् । अतएव अर्हति स्त्रीत्यनुवृत्तौ बौधायनः । न
दायन्निर्दिष्ट्या अदायादाच्च स्त्रियो मता इति श्रुतेरिति । न दायमर्हति स्त्रीत्यन्वयः ।
पत्न्यादीनान्वधिकारोविशेषवचनादविच्छेद इति ।

3. तत्र साधुः । मन्वादिवचनेषु प्राम्लिखितेषु पितामह्या धनाधिकारस्य षडङ्ग-
याहिकयैव विधानात्तदेवाव्यक्ततया योगीश्वरवचनस्यापि विष्टपैकश्रेवेष्ट तत्संयद्वेऽपि
श्रुतेस्तदन्यपरत्वेनाविरोधात् ।

जीमूतवाहनस्य तु मात्राधिकारविचारप्रस्तावे पितामहसन्तानात्पूर्वम्पितामहाच्च
परतः पितामह्या धनाधिकारः । पित्रः परतोमात्राधिकारवत् । याज्ञवल्क्येन
मात्राधिकारप्रदर्शनेनैव पित्र्यादिभ्यः पूर्वम्पितामहपितामहोरधिकारस्य सूचित-
त्वात्पृथङ्गोक्त इति वदतोऽत्र च सपिण्डस्त्रीश्रुदासार्थङ्गोत्रजपदग्रहणं वदतः पूर्वपर-
विरोधानुसन्धानमपि नास्ति । षडङ्गयाहिकया योगीश्वरवचने पितामह्याः पित्र्यादि-
पत्नीवदनभिधानस्य तुल्यत्वात्तद्देवादायादश्रुतिप्रवृत्तेरविरोधात् ।

विद्यारण्यश्रीचरणोक्तप्राम्लिखिते तस्मान्निर्दिष्ट्या इत्यादि श्रुतिव्याख्याने
तु स्त्रीयान्दायग्रहणप्रतिषेधकत्वमेवास्याः श्रुतेर्नास्तीति न वा शङ्का नचोत्तरम् ।
परन्तु बौधायनमुनिवचनविरोधे तस्यास्यानङ्ग्यमुपपद्यताम् । अस्तु वा इन्द्रियपदस्य
वाक्यशेषात्सामान्यपरता तथापि दायादत्वाभावाभिधानावन्वयस्यान्यस्यासत्त्वान्निराक-
म्बनश्रुतेरसम्भवात्सिद्धवत्कीर्त्तनानुपपत्तिप्रसूतप्रतिषेधकत्पनावश्यम्भावात् । तस्माद्रूपे-
णाविज्ञातेन हतेन ब्रह्महेत्वन्नेवेति ध्येयम् ।

4. पितामह्या अभावे पितामहादयः सगोत्राः सपिण्डा धनभाजः । भिन्न-
गोत्राणां सपिण्डानां बन्धुशब्देन ग्रहणात् ।

तत्रापि पित्रसन्तानाभावे पितामही पितामहः पित्र्यास्तत्पुत्राच्च क्रमेण धन-
भाजः । पितामहसन्तानाभावे प्रपितामही प्रपितामहस्तद्वन्माता तत्सूनवश्चेत्येवमासत्त-
मात्समानगोत्राणां सपिण्डानामपुत्रधनभाजताम् ।

सपिण्डाभावे समानोदकानाम् । ते च सपिण्डानामुपरि सप्त । जन्मनामजाना-
वधिका वा । यथाह मनुः । सपिण्डता तु पुरुषे सप्तमे विनिवर्त्तते । समानोदकभा-
वस्तु निवर्त्तताश्चतुर्दशात् । जन्मनामोः श्रुतेरेके तत्परं गोत्रमुच्यत इति । विष्णुवचने
बन्धुसङ्कुल्यपदानां सपिण्डसगोत्रौ ऽष्टौते इति ब्राम्णेव प्रतिपादितम् । समानोदका
अपि प्रत्यासत्तिक्रमेण धनभाजः ।

5. समानोदकाभावे बन्धवो धनभाजः । बन्धवश्च त्रिविधा आत्मबन्धवः पित्र-

बन्धवो मातृबन्धवश्च । तथा च स्मृतिः । आत्मपितृव्यसुः पुत्रा आत्ममातृव्यसुः सुताः । आत्ममातुलपुत्राश्च विज्ञेया आत्मबान्धवाः । पितुः पितृव्यसुः पुत्राः पितुर्मातृव्यसुः सुताः । पितुर्मातुलपुत्राश्च विज्ञेयाः पितृबान्धवाः । मातुः पितृव्यसुः पुत्रा मातुर्मातृव्यसुः सुताः । मातुर्मातुलपुत्राश्च विज्ञेया मातृबान्धवा इति । तत्रापि प्रत्यासन्नत्वात्प्रथममात्मबन्धवस्तदनन्तरपितृबन्धवस्तदनुमातृबन्धव इति क्रमः ।

मनुस्मृतौ तदभावे सकुल्यः स्यादाचार्यः शिष्य एव वेत्तत्र सकुल्यशब्देन सगोत्रसमानोदकानां मातुलादीनां बन्धुत्रयस्य च ग्रहणं योगीश्वरवचनेऽपि बन्धुपदेन मातुलजक्षमन्यथा मातुलादीनामग्रहणमेव प्रसज्येतेति तत्पुत्राण्यन्वधाधिकारस्ततः प्रत्यासन्नान्तोषामेव स नेति मङ्गदंगौचित्यमापद्येत ।

6. बन्धूनामभावे आचार्योऽधनभाक् । यद्यपि योगीश्वरवचस्याचार्योऽनोपात्तस्तथापि शिष्य उपात्तस्ततः प्रधानतमः प्रत्यासन्नतमश्चाचार्यश्चौचित्यादुपलक्षणीयः । आचार्यः शिष्य एववेति मनुना । पुत्राभावे प्रत्यासन्नः सपितृव्यस्तदभावे आचार्यस्तदभावेऽन्तेवासीत्यापस्तम्बेन च स्पष्टमेवाचार्यभावे शिष्यस्याधिकारबोधनाच्च ।

7. शिष्याभावे सन्नक्षचारी सहाध्यायी धनभाक् । यस्यैकस्मादाचार्योऽपनयनाध्ययने ।

8. सन्नक्षचारिणीभावे ब्राह्मणद्रव्यव्यतिरिक्तं राजा गृह्णीयात् । सहाध्यायिपर्यन्तमधिकारसुक्ता तदभावे ब्राह्मणधनवर्जं राजगामीति प्रागुदाहृतवशिष्ठवचनात् । सर्वेषामप्यभावे तु ब्राह्मणा रिक्थभागिनः । त्रैविद्याः शुचयोदान्तास्तथा धर्मे न हीयते । अह्यर्थं ब्राह्मणधनं राज्ञा नित्यमिति स्थितिः । इतरेषान्तु वर्णानां सर्वभावे हरेन्नुप इति मनुवचनाच्च ।

9. ब्राह्मणद्रव्यं सन्नक्षचारिपर्यन्ताभावे ओत्रियो ब्राह्मणः प्रथमं गृह्णाति । तदभावे ब्राह्मणमात्रम् । यथाह गौतमः । ओत्रियो ब्राह्मणस्यानपत्यस्य रिक्थभजेरन्निति । ब्राह्मणमात्रन्तु मनुवचने ब्राह्मणमात्रग्रहणात् । नारदोऽपि । ब्राह्मणार्थस्य तन्नाशे दायादश्चेन्न कश्चन । ब्राह्मणस्यैव दातव्यमेनखी स्याद्भूपोऽन्यथेति ॥

PART VIII.

1. पुत्रादीनां पत्नीपर्यन्ताम्बुदायहराणां वानप्रस्थ्यादिविधयेऽपवादमाह योगीश्वरः । वानप्रस्थयतिब्रह्मचारिणां रिक्थभागिनः । क्रमेणाचार्यसंख्यधर्मभ्रात्रेकतीर्थिन इति । ब्रह्मचार्यत्र नैष्ठिको यतिसाहचर्यात् । तेनेपकुर्वाणस्य धनं पुत्रादिदौहित्रान्तानामसम्भवात्पित्रादय उक्तक्रमेण गृह्णीयः ।

क्रमश्चात्र प्रतिबोभो ज्ञेयः । तथा च नैष्ठिकस्य मृतस्य धनमाचार्यस्य यतेः संख्यस्य वानप्रस्थस्य धर्मभ्रात्रेकतीर्थिनः ।

धर्मभ्राता प्रतिपन्नो भ्राता । तीर्थशब्दस्याश्रमवाचित्वादेकतीर्थेकाश्रमी । धर्मभ्राता चासावेकतीर्थी चेत्तर्थाः ।

शिष्यस्य सत्त्वन्तु न सदृशत्वम् । दुर्लभपुत्रादीनामपि धनानधिकारस्य प्रमाणा-
न्तरेणैव प्राप्तत्वात् । तच्च वक्ष्यते । किन्त्वध्यात्मशास्त्रअवधारणतदर्थानुष्ठानक्षमत्वं
यादृशम् ।

मदनरत्नकारम् । वानप्रस्थधनमाचार्यो गृह्णीयाच्छिष्योवेति विद्यावचनं किञ्चि-
त्वानुलोममेव क्रमं मत्वा वानप्रस्थधनमाचार्यभावे शिष्यो गृह्णीयादित्याह ।

2. नव्वनंशास्त्राश्रमान्तरगता इति वशिष्ठादिवचनैर्नैष्ठिकादीनान्धनसम्बन्धा-
भावस्य वक्ष्यमाणात्तज्जनयद्वाधिकाधिकथनमत्रानुपपन्नं । न च रिकथयद्वास्य तेषां
वशिष्ठादिभिर्निषेधेऽपि प्रकारान्तरार्जिततदीयधनाधिकारप्रतिपादकमिदम्भविष्य-
तीति वाच्यम् । ब्रह्मचारी रयतिश्चैव पञ्चाग्न्याग्निनावुभाविति स्मृते ब्रह्मचारिणश्च प्रति-
ग्रहादिनिषेधात् । अग्निचयेभिर्भुजिरिति यतेर्ब्रह्मसम्बन्धस्यैव निषेधाद्वाधनमिति चेत् ।

न । वानप्रस्थस्य तावत् अङ्गोमासस्य वशां वा तथा संवत्सरस्य वा । अर्थस्य
निश्चयं कुर्यात्कृतमान्धयुजे त्वजेदिति । वचनाङ्गोमनादिपय्याप्तयत्किञ्चिज्जनसंग्रहोऽस्येव ।
यतेरपि । कौपीनाच्छादनार्थं हि वासो वै विभ्रयाद्यांतिः । योगसम्भारभेदांश्च गृह्णी-
यात्पादुके तथेति । वचनादस्त्रपुस्तकादि किञ्चिदस्येव । नैष्ठिकास्यापि शरीरयाचार्यं
वस्त्रादिसम्बन्ध आवश्यकः । तेन मृतानाम्नेषां तत्तत्त्वेन ग्राह्यमित्यपेक्षान्दायादान्तरा-
पवादेनैतेऽधिकारिण उच्यन्त इति ।

CHAPTER IV.

1. अथ संकष्टिधनविभागः । तत्र मनुः । विभक्ताः सह जीवन्तो विभजेरन्
पुनर्यदि । समस्तत्र विभागः स्यात् व्यैद्यं तत्र न विद्यत इति । अत्र समविभागनिय-
मादेव विषमविभागप्रकारनिरासे सिद्धे व्यैद्यन्तत्र न विद्यत इति पुनर्वचनं व्यैद्यादि-
कृत एव विषमविभागो न भवति ब्रह्मधनसंसर्गानुरोधी तु विषमविभागो भवत्ये-
वेति सूचनार्थम् ।

केचित्तु संकष्टप्रथोपचयांश्चैद्यादिकृतोविषमविभागो भवत्येव । संकष्टप्रथ-
विभागस्तु सम एवेत्येतादृशप्रापनाय व्यैद्यमिति वाक्यशेष इत्याहुः ।

तत्र एतादृशव्याख्याया अस्मादप्रतीतेः । समस्तत्र विभागः स्यादित्युक्त्या प्रथोप-
चयेऽपि सामान्यनियमप्रतीतेः ।

2. संकष्टिधनविभागोऽप्यविभक्तविभागवत्संकष्टप्रथाविरोधेन विद्यादिनव्वस्या-
विभाज्यत्वमुक्त्येव प्राप्तमपवादति दृष्टव्यतिः । संकष्टिनाम्नु यः कश्चिद्विद्या-
श्रौत्यादिनाधिकम् । प्राप्नोति तस्य दातव्योद्यंशः शेषाः समाश्रिनः ।

3. संकष्टिता च पित्रादिनैव कर्त्तव्या नान्येन विभक्तो यः पुनः पित्रेत्यादि
प्राक्निश्चितदृष्टव्यतिवचनादिति वक्ष्यः ।

वयन्तूपकञ्चान्पित्रादिग्रहणमितीति प्रपञ्चितम् ।

४. अविभक्तविभागवत्संखटिष्वपि मिथोविभागकरणात् प्राग्योऽन्यतस्तस्य पुत्राः प्रसीतपितृकायान्तु पितृतोभागकल्पनेतिवचनात् स्वस्वपित्रं विभज्य ऋणीयुः ।

यस्य तु संखटिनोऽन्यतस्य पुत्रादयो न सन्ति तज्जनग्रहणे पत्नीत्यादिवचनात्प-
त्न्यादीनां प्राप्ते तदपवादत्वेन स्वर्थातस्य अपुत्रस्यैवेत्यनुवृत्तावाह योगीश्वरः संखटिणस्तु
संखट्येति । तुशब्दात्पूर्वापवादः । अपुत्रस्य संखटिनोऽन्यतस्य धनं संखट्येव ऋणीयान्न
पत्न्यादिरित्यर्थः । एतेन पत्न्याद्यपुत्रधनग्रहणाधिकारिगणे भात्रधिकारावसरे वचन-
मिदं प्रवर्तत इति व्याचक्षाळो जीमूतवाहने भ्रान्तएवेत्यवसेयम् ।

अस्याप्यपवादः । सोदरस्य तु सोदरः । दद्यात्तापहरेचांशज्ञातस्य च न्यतस्य-
चेति । संखटिनः संखट्योऽस्यात्रापि सम्बन्धः । तथाचायमर्थः । सोदरः संखट्यी संख-
टिनः सोदरस्य जातस्य पुत्ररूपेणोत्पन्नस्यांशदद्यात्तत्पुत्राय दद्यादिति यावत् ।
न्यतस्य पुत्रादित्रयरूपेणाप्यजीवतोऽंशमपहरेदात्मसात्कुर्व्यात् स्वयमेव ऋणीयादित्यर्थः ।
पदद्वयानुवृत्तं विनैव आख्याने तुशब्दवजायातमस्य पूर्वोपवादत्वं भव्येत । एवञ्च सोद-
रासोदरसंखटिसङ्गावे सोदर एव संखट्यी सोदरसंखटिधनग्रहणाधिकारी न
भिन्नोदर इति पूर्वोक्तापवादः । यत्र तु भिन्नोदर एव संखट्यी सोदराच्च न । तत्र
हयोर्विभज्य पुत्रादिरहितभाटधनग्रहणमिवाह । अन्योदर्यस्तु संखट्यी नान्योदर्यो
धनं ॥ असंखट्यपि चादद्यात्संखट्योनान्यमाह्वज इति ॥ अत्रासंखटिपदं काका-
न्तिवत्पूर्वोक्ताराज्येयोरपि संबध्यते । तथा संखट इत्यपि । तत्र पूर्वोर्द्धे एकौदरसंखटः
सोदर इत्यर्थक उत्तरार्द्धे तु संखटित्वार्थकं । अन्यमाह्वज इत्यनन्तरश्चैवकारोऽध्या-
हार्यः । ततश्चायमर्थः । अन्योदर्योऽसोदरोऽपि संखट्यी चेज्जनं हरेत् । असंखट्यी
चेदन्योदर्यो न हरेत् । तथा चाव्यव्यतिरेकप्रदर्शनेन भिन्नोदरस्य संखटित्वमेवैकं
धनग्रहणकारणं न भाटत्वमात्रमित्युक्तं भवति । तथा संखटः सोदरोऽसंखट्यपि
चेज्जनं हरेत्किमुत संखट्यी । संखटः संखट्यप्यन्यमाह्वज एकौ धनज्ञ हरेत् ।
किन्तु सोदरेणासंखटिनापि सह विभज्य ऋणीयात् । अत्रायं पर्यवसितोऽर्थः ।
असंखटिसोदरे संखटिभिन्नोदरे च सत्यपुत्रभातुर्जनं सोदरत्वसंखटित्वरूपैकैकधन-
ग्रहणकारणयोगात्समं विभज्य ऋणीयाताम् । सोदरोऽपि चेत्संखट्यी कारवदययोगेन
वक्तव्यत्वात्सर्वं स एव ऋणीयादिति ।

अत्र चैकैकनियमेनार्थादयंकारणनिराससिद्धावपि दृढीकरणाय पुनस्तन्नि-
रासः । उभयथापि वाक्यकृतपक्षेः ।

पुंलिङ्गश्च संखट्योऽन्त्यादावविवक्षितमतएव मनुना सोदरभगिनीनामपि तज्जन-
ग्रहणमुक्तम् । यथाह । विभक्ताः सह जीवन्तो विभजेरन् पुनर्यदीति संखटिविभाग-
व्यक्तम् । येषां ज्येष्ठः कनिष्ठो वा जीयेतांशप्रदानतः । ज्येयतांशतरोवापि तस्य भागो
न लुप्यते । सोदर्यो विभजेयुक्तं समेत्य सहिताः समम् । आतरो ये च संखट्या भगि-
न्यश्च समाभय इति ॥ येषां संखटिनां मध्येऽन्यतरः संखट्यी ज्येष्ठः कनिष्ठोऽपि मध्व-
मेवांशप्रदानतो जीयेतानधिकार्यंशप्रदाने स्यात् । सार्वविभक्तिप्रत्यक्षतन्वर्थे तसिः ।

विभागकाले पातित्येनाश्रमान्तरपरिग्रहे वा । न्नियेत वाऽऽहृतभागश्च । तर्हि तस्य भागो न क्षुण्यते पृथगुद्भवीयः । स च प्रथमं तत्पुत्रादिभ्योदेयः । तदभावे सोदर्या भ्रातरोऽसंख्यता अपि । समेत्य देशान्तरगतस्तत आगत्य संहिता मिजिताः । ये च भ्रातरो भिन्नोदरा अपि संख्यताः संख्यतिनः सनाभयोऽन्तस्य सहीदरा भगिन्यश्च सममवैषम्येण विभजेयुर्विभज्य गृह्योयुरित्यर्थः । अत्र सोदरभ्रातरभगिनीनामसंसर्गेऽपि संसर्गे च भिन्नोदराणामपि धनाधिकारमभिदधता मनुना योगीश्वरोक्त एवार्थः स्पष्टमुक्तो भवति ।

5. अत्र श्रीकारः । संख्यतिनस्तु संख्यतीत्यस्यासोदरसंख्यतिमात्रविषयत्वेऽन्यानपेक्षत्वात् सोदरस्य तु सोदर इत्यस्याप्यसंख्यसोदरमात्रविषयत्वे तथात्वादसोदरे संख्यतिनि सोदरे चासंख्यतिन्युभयोः प्राप्तौ यदि द्वयमेव प्रवर्तते तदान्योऽन्यसापेक्षयोश्चभयोर्विधायकत्वं स्यात् । नचैकस्य सापेक्षनिरपेक्षोभयरूपतया विधायकत्वं विधिवैषम्यापादकमुचितम् । यथा द्वयोः प्रथयन्तीत्यस्य न वैश्वदेव उत्तरवेदिमित्यादिनिषेधकृतविकल्पसापेक्षं पर्व्वद्वये विधानमन्यपर्व्वद्वये तु निरपेक्षमिति सप्तमाधिकार्ये विधिवैषम्यभयादन्यथा सिद्धान्तितम् । तथा चासोदरे संख्यतिन्यसंख्यतिनि च सोदरे उभयोरप्रवृत्तौ न कोऽपि तज्जनं गृह्यीयादित्यापेक्षेत् । अतः संख्यतिनस्त्वित्यनेन संख्यतिधने संख्यतिनोऽधिकार उक्ते तदपवादोऽयं सोदरस्य त्विति । तथा च संख्यतिनोऽप्यसोदरस्य सोदरे संख्यतिनस्त्वितिऽपि सति नाधिकार इत्याह ।

तन्मीमांसानयतत्त्वानालोचननिबन्धनमभिधानं । नहि द्वयोः क्वचिन्निरपेक्षयोः प्रवृत्तयोः शास्त्रयोः क्वचिदुभयविषयसमावेशवशादेकत्र प्रवृत्तिमात्रेण वैरूप्यम्भवति । तथा सति केवलोल्लाहप्रतिस्त्रोत्रपक्षेदे निरपेक्षयोः सर्व्वसदाक्षिण्यादाक्षिण्यशास्त्रयोर्गुणपदुभयापक्षेदे प्रवृत्त्यभावादिरोधाभावेन किञ्चिन्नाध्यत इति विचारो निर्मूलः स्यादपक्षेदनये । तस्मात् क्वचिद्विध्यन्तरबाधनिरपेक्षविधानं क्वचित्पक्षाधसापेक्षं चेत्तदा वैरूप्यं यथोपात्रवपन्तीत्यत्र प्राङ्गिरूपितम् । अन्यथा चतुर्होत्रा पौर्व्वमासीमभि-
मृशेत्यस्यैवाचाममावास्यामित्यनयोऽप्यंशुयागाग्नीषोमीर्यावश्य ऐन्द्रधैत्यप्रयोविषये चैकैकशः प्रवृत्तयोश्चभयसाधारण्यविविध विषयसमावेशेऽप्येकमपि न प्रवर्तते ।

यदपि स्वयमुपवर्णितं संख्यतिनस्त्वित्यस्यापवादः सोदरस्य त्वित्यादिरिति । तदसम्बद्धं । विनिगमकाभावेन वैपरीत्यस्यापि सम्भवात् । पौर्व्वपर्व्वमात्रस्याप्रयोज-
कत्वात् । तच्चान्योदर्थवचनं संख्यतिनस्त्वित्यस्यैव विवरणार्थमित्युक्तं । तेन वचोभङ्गानर्थ-
कमेव तस्योक्तम् । किञ्च सोदरेऽसंख्यतिनि संख्यतासोदरापवादार्थं सोदरवचनस्य
वर्णनात्सोदरासोदरयोश्चभयोरप्यसंख्यत्वे प्रवृत्त्यभावात् तुल्याधिकारो वा द्वयोरपि
स्यात् । अथात्रापि सोदरवचनमेव प्रवर्तते तर्ह्येकत्र संख्यतिवचनबाधसापेक्षमन्यत्र
तु निरपेक्षमिति प्रवृत्त तमेव विधिवैरूप्यम् । यथा सौमिकी वेदिविधिर्दीक्षणीयादि-
व्यतिदेशप्राप्तदर्शपौर्व्वमासिकवेदिबाधेन विधीयेत तर्हि तत्रातिदेशबाधसापेक्षकदि-
धिरन्यत्र तन्निरपेक्ष इति वैरूप्यादवेदिमद्विषयकत्वमेव तस्य व्यवस्थापितं तन्मे ।

अस्मन्मते तु व्याख्यातरीत्या द्वयोर्भिन्नविषयत्वेनानर्थक्यवैक्ययोर्ग्नं प्रसत्तिरिति-
ज्ञतं विसरेत् ।

६. स्मृतिचन्द्रिकाकारत्वाद् । येषां ज्येष्ठः कनिष्ठोवेत्यादिमनुवचने च शब्देन
शेदरभाट्टभगिन्यशेदरसंखट्टभाट्टाभितरेतरयुक्तानां विभागवर्ततायाः समेत्य-
सहितशब्दाभ्यामवगतैर्योगीश्वरवचने च संखट्टिशेदरसङ्गावे भिन्नोदरस्यानधिकारा-
वगतैरस्ति तावदनयोर्विरोधे तद्विरोधपरिहाराय केचिदेवं मानवं व्याचक्षते ।
तन्मनुप्रभागं शेदरा यदि संखट्टास्तदा तस्य गृह्योयुर्गसंखट्टिनः शेदरा अपि ।
संखट्टिशेदराभावे सर्व्वं शेदराः समेत्य मिश्रित्वा सहिताः समप्रधानभावेन
सममन्यूनाधिकं विभजेरन् शेदरायामभावे सगमयो भगिन्यस्तासामप्यभावेऽन्योदर्थ्या
इति । तदेतदनेकाध्याहारदोषादतिस्फुटत्वाच्चेत्तज्जीयम् । विज्ञानेश्वरव्याख्यानमपि
मानवसंवादायान्योदर्थ्यान् संखट्टी गान्योदर्थ्या धनं हरेदिति पाठेन योगीश्वर-
वचनस्य यत्तदप्याहृत्यध्याहारादिना स्फुटमत्यन्ताप्रतीयमानार्थञ्च स्वप्रज्ञाविनिसित-
मात्रम् । तस्माद्यथाप्रतीयमानार्थकयोरेव मनुयोगीश्वरवाक्ययोर्विषयव्यवस्थयैवावि-
रोधो वाच्यो नातिस्फुटैकार्थ्येनेति । सैवोच्यते । व्यावरजङ्गमात्मकोमयविधधनसङ्गावे
मनुवचनं संखट्टासंखट्टानां भाट्टाभां भगिनोनाञ्च विभज्य ग्रहणं बोधयति । योगीश्वर-
वचनं केवलाव्यवरसङ्गावे केवलातदितरत्रयसङ्गावे वा तद्विषयम् । अन्तर्हितं तु यद्-
ग्रहणं संखट्टानां तद्वेत् । भूमिं गृह्यन्वसंखट्टाः प्रगृह्योयुर्ग्रहास्त इति प्रजापति-
स्मृते । अथमिति गोविणिवर्द्धन्यायेन प्रकटस्य द्विपदचतुष्यदादिद्वयस्य जङ्गमत्रयस्य
ग्रहणम् । संखट्टानां भिन्नोदरायामिति शेषः । योगीश्वरवचसि गान्योदर्थ्यादिति
पाठः । तस्मात् केवलाव्यवरसङ्गावे केवलाजङ्गमसङ्गावे च योगीश्वरवचनादसंखट्टो-
ऽपि शेदरस्तद्गृहीयात्तु संखट्टोऽपि भिन्नोदरः । उभयविधधनसङ्गावे तु
प्रजापतिवचनोक्तव्यवस्थया संखट्टाः शेदरा भाट्टभगिन्यः संखट्टा भिन्नोदराञ्च वि-
भज्य गृहीयुः । मनुवचनस्याप्येतदर्थतैवेति ।

तदसत् । अध्याहारस्फुटतादिदोषस्य तवाप्यनपायात् । प्रजापतिवचनोक्तव्यव-
स्थया विज्ञानेश्वरीयव्याख्यानेऽप्यविरोधात् । अतएव मदनरत्नज्ञता तद्व्याख्यानमनु-
येत्यैव प्रजापतिवचनमपि व्यवस्थापकतया पठितम् । प्रयुत भवद्याख्याने योगीश्वर-
वचने गौनवत्त्वं दुष्परिहरमापद्यते । अन्योदर्थ्यन्तु संखट्टी गान्योदर्थ्याधनं हरेदि-
त्यनेनेत्याख्यैवार्थस्य संखट्टो गान्यभाट्टज इत्यनेनान्यूनानतिरिक्तस्य प्रतिपादनात् । मान-
वसंवादिनेऽप्युनवत्त्वस्यार्थस्य कोशेनापि वक्तुं शक्यत्वे मूलभूतमुत्पत्तरक्षेपनागौरवा-
यादिस्यार्थान्तरस्य कल्पयितुमनुचितत्वाच्च ।

७. वाच्यवत्प्रकृतिटीकायां श्रूयमात्रिः । अन्योदर्थ्यः संखट्टी गान्योदर्थ्यधनं
गृहीयात् । असंखट्ट्यपि शेदरस्य गृहीयात् । न तु संखट्टः सापन्नभाता । गान्योदर्थ्यो
धनं हरेदिति पाठे अन्योदर्थ्यः सन् संखट्ट्यपि धनं न गृह्योयादिति व्याख्या । असं-
खट्टिशेदराधिकारार्थमिदं वचनमते । न पुनरुक्ततेत्याह ।

तत्तु श्रीकरमतसमानयोगक्षेमम् । रत्नाकररत्नत्वाच्च यस्तु कल्पतरौ नान्योद-
र्घ्यधनं हरेदिति पाठो दृश्यते स मूलभूतयाज्ञवल्क्यमिताक्षरापारिजातहृत्पायुध-
ग्रन्थेषु नान्योदर्थो धनं हरेदिति पाठदर्शनात्तदनुसारिण्याख्यानदर्शनाच्च किमिप्रमाद
श्वेति ।

8. दायतत्त्वकारस्तु सोदरेऽसंख्येति संख्येति सोदरे च कतरस्तावद् गृही-
यात् । एवं सोदरासोदरयोः संख्येतिनोः सङ्गावे कतर इत्यत्र प्रथम आह अन्यो-
दर्थ्यस्त्विति । अन्योदर्थ्यः पुनः संख्येति सन् गृहीयान्नान्योदर्थ्यमात्रः । किन्त्वसंख्येति
पूर्ववचनस्यसोदरपदानुषङ्गात् सोदरो गृहीयात् । तेनैकत्र विषये पूर्ववचनेऽसोद-
रत्वसंख्येत्येवरेकशः सम्बन्धेन तुल्यत्वादिभग्नग्रहणमेतदुभयसत्त्वे वासोदरस्या-
संख्येतिनोऽतुल्यरूपत्वाच्चेति । द्वितीय आह संख्येति नान्यभाटज इति । सोदरे संख्ये-
तत्त्वान्यभाटजः संख्येतिऽपि न गृहीयात् । अर्थात्तत्र संख्येति सोदर एव गृहीयात् ।
संख्येतिविशेषेऽपि सोदरत्वेन तस्यैव वक्तव्यत्वादित्याह ।

तदपि मिताक्षरादिस्माद्येव व्याख्यानाकौशल्यव्यधिकम् ।

9. यदा तु संख्यः पिता पित्र्यो वा नास्ति तदाऽसंख्यभिन्नोदरो गृही-
यात् । तदभावे त्वसंख्यः पिता । तदभावे तत्पत्नी । तथा च शब्दः । स्वर्थातस्य
ह्यपुत्रस्य आढ्यामि इत्थं तदभावे पितरौ हरेयातां ज्येष्ठा वा पत्नीति । स्वर्थातस्या-
पुत्रस्य संख्यस्य संख्यभावे भिन्नोदरासंख्यभाट्यामि इत्थमित्यर्थः । तेन संख्य-
धनविषये यथास्थितमेवेदं वा वचनमिति स्मृतिचन्त्रिकाभेदमद्वयकारावाहृतुः ।

संख्यभाट्यविषयमेवेतत्तेन पितृपत्नीसदभाव इति न विवक्ष्यमिति मिताक्षरा-
कारादयः ।

स्मृतिचन्त्रिकायां शब्दवचने ज्येष्ठग्रहणं सुसंयतत्वादिगुणवत्त्वकथनार्थं न तु
मध्यमादिनिवृत्त्यर्थम् । पुनरपि तदभाव इति वक्तव्ये वाशब्दः प्रयुक्तः पक्षसाम्यात् ।
तथा हि । वाशब्दाद्विकल्पः प्रतीयते । न चात्र साम्यरूपे वक्तुनि तुल्यवद्विकल्पः
सम्भवति न हि वक्तुनि विकल्प्यन्ते इति न्यायस्य शास्त्रसिद्धत्वात् उपपत्तिसिद्धत्वाच्च ।
तस्मादत्र वाशब्दादभावविकल्पावगतेः पक्षसाम्यमस्येव । एवञ्चायं क्रमः आचभावे
पिता तदभावे माता तदभावे ज्येष्ठा पत्नीति ।

मदनरत्ने तु मातापित्रोर्विपरीतक्रमः । मिताक्षरोक्तन्यायादिभक्तासंख्येति-
वयविव्यावचनवदत्र न्यायबाधकवचनभावादिति तदायशः । अतएव पत्नी दुहितर
इतिवचने विद्यावचनानुरोधेन स्मृतिचन्त्रिकावर्त्यतरावित्त्र प्राक् पिता तदभावे
मातेत्येव तत्रोक्तम् । प्रपञ्चितस्यैतद्विस्तरेऽस्माभिः प्रागेव ।

ततश्च पत्नीदुहित्रादिक्रमविरोधादविरोधायैतत्संख्यभागविषयमिति कथ्यते ।
विभक्तोक्तनैयायिकापत्नीदुहित्रादिक्रमेऽत्र वाचनिकक्रमेण बाध्यते । अस्मिन् क्रमे
कस्यचिन्न्यायस्याभावाच्चिनिक्त एवायं क्रमः । गारदोऽपि । मृते पत्यौ तु भार्यास्तु
अभाटपितृभाट्याः । सर्वे सपित्रास्तु धनं विभजेयुर्दयांशत इति । अस्यार्थः ।

मार्थाः पत्न्यः । अथाहपिठमाहकाः याः पत्न्योऽहपिठमातरस्तदभावविविधा इत्यर्थः । अत्र हन्वसमासे आत्रपेक्षयाभ्यर्हितमित्रादिपदपूर्वनिपातं परित्यज्य वैपरीत्येन समासरचनां कुर्वता गारदेन संकष्टापुत्रत्रयं प्रथमं आह्वयामि तदभावे पिठगामि तदभावे माह्वयामि तदभावे ह्यस्त्यपत्न्यमिगामीति दर्शितम् ।

एवञ्च संकष्टपत्नीनां मुख्यगौत्रपुत्राभावे न प्रथमं दायहरत्वं किन्तु संकष्टि-
शेदरभिन्नोदरआहपिठमाह्वयामप्यभावे इति ऋकथम् । सर्व्वे सपिण्यास्त्वित्वादेस्त्य-
मर्थः । संकष्टापुत्रस्य ये आहपिठमाह्वयतिरिक्ताः सपिण्या आह्वयपुत्रादयस्ते स्वधनं
पूर्व्वमपुत्रधनेन सह स्वमित्रादिना संकष्टं तदूढं तत्पत्नीभिः सह यथांशतो आह-
वयामां आत्रंशो मार्थाणां भर्त्रंश्च इत्येवमंशानतिक्रमेण विभजेयुरिति ।

10. पत्न्यभावे संकष्टापुत्रांशं तद्भूमिनी लभते । तथा च कृहस्यति । या
तस्य भूमिनी सा तु ततोऽंशं लब्धुमर्हति । अत्रपत्न्यस्य धर्मोऽयमभार्यापिठकस्य च ॥
अमाह्वयस्य चेति चण्व्दार्थः ।

11. भूमिन्धभावे क्वेवकाः सपिण्या अनन्तराः सपिण्यास्तदायं विभजेरन्
यथांशतः तदायं तस्य तस्य धनम्भवेदिति मन्त्रप्राप्त्यासत्तिक्रमेण लभेरन् । प्रतिपदो-
क्तानामभावात् । तथा च स एव । नतोऽनपत्योऽभार्य्यश्चेदआहपिठमाह्वयः । सर्व्वे
सपिण्यास्तदायं विभजेरन् यथांशतः ॥ तदायं संकष्टिदायम् । नतोऽनपत्य इत्यादेः
प्रतिपदोक्तसंकष्टधनयाहिरहितश्चेदित्यर्थः ।

सपिण्याभावे तु विभक्त्यन्तधनवदेव संकष्टस्यार्थातत्रयमपि प्रागुक्तक्रमेण प्रत्या-
सत्तितारतम्येन समानोदकादिगामीति ऋकथम् । संकष्टत्रयमधिकृत्य सपिण्येभ्य ऊढं
विशेषाकृतिरिति ।

12. ननु सत्यपि पत्न्यादौ वचनान्मृतसंकष्टिधनस्य संकष्टिभ्रात्रादियान्मृतवत्
संकष्टासंकष्टपुत्रसङ्गवेऽपि पिठधनस्याप्येतद्वचनवशात् संकष्टिपुत्रमात्रग्राह्यत्वम-
स्त्विति चेत् । न । अपुत्रस्येति पूर्व्ववचनस्यानुवक्तादपुत्रसंकष्टिमरकस्य धनग्रहण-
कारकत्वात् संकष्टिन्ध पुत्रेणापुत्रत्वाभावात् संकष्टिगस्त्वित्यस्याप्रकृतेर्विभजेरन्
सुताः मित्रोरिति वचनात्पित्रंशे पुत्रयोर्द्वयोरत्रापि समभागभागित्वम् । प्राप्तानः
खांशः परं संकष्टपुत्रेण सृक्तावशिष्टः पृथगुद्धरणीयः । पितृर्थावांस्तदानीं विश-
मानोऽंशः स संकष्टासंसृष्टाभ्यां विभज्य ग्राह्यः । न च संसृष्टिगस्त्वित्यत्रापुत्रपदा-
नुवक्तो नास्त्विति वाच्यम् । सपुत्रसंसृष्टिभ्रात्रादिधनेऽपि पुत्रादिबाधेन तदंशस्य
भ्रात्रादियान्मृततापत्तौ सकलदेशीयानादिव्यवहारविरोधापत्तेः । अन्यथा पुत्रवदपुत्र-
साधारकस्यापुत्रमात्रविषयपत्न्योत्वादिवाक्यापवादकत्वानुपपत्तेस्तद्विधेयविरोधाप-
त्तेः । न च भ्रात्रादिसंसृष्टिन्ध एवायं विशेषणं जायतेकत्वात् । पुत्रसंकष्टिगस्तु न
जायतेकत्वात् असम्भवाच्च । सम्भवे अभिचारे च स्याद् विशेषणमर्थवदित्यभि-
युक्तोत्तेरिति वाच्यम् । पृथग्वाक्यद्वयाभावादपि च वाक्ये 'अविशिष्टेव्यपुत्रस्त्वारोह
अविच तदपुत्रस्त्वारोह विधिप्रकृतौ विशेषणवर्णितत्वावर्णितवाक्यार्थद्वयविभजनविधि-

वैषम्यरूपवाक्यभेदापत्तेः । किञ्च पित्रादिद्रव्यस्यान्वे पुत्रत्वादिकमेवापतितत्वादिविशिष्टं प्रयोजकं न तु संकटत्वविशिष्टमपि गौरवात् । तच्च सर्वेषां संकटानामसंकटानाम् तुल्यमिति सर्वेषामेव पुत्रादीनामविशेषेण तद्वन्यव्यवसृजितम् । न च विभागेन पित्रादिद्रव्याहंत्वापगमः । सर्वेषु पुत्रेषु विभक्तासंकटिष्ठव्यपुत्रवद्वाह्यादीनामेव तत्र धनाधिकारापत्तेः । प्रत्युतापसम्बन्धेन हारीतेन च विभागोत्तरमपि पितापुत्रयोः परस्परधनाधिकारप्रतिपादनाच्च । यथाह तुल्लौ । जीवन्नेव वा विभज्य वनमाश्रयेत् वृद्धाश्रमं वा मण्डेत् स्वस्थेन वा संविभज्य भूयिष्ठमादाय वसेत् यद्युपदर्शयेत् पुनस्तेष्वो गृहीयात् स्त्रीयाच्च विभजेदिति । वृद्धाश्रमं पारित्राण्यम् । उपदर्शयेद्भक्ष्याभावेन क्षीयेत् ।

विभक्तौ तु सति पूर्वविभक्तानां पुत्राणां प्राप्तोऽपि पित्रधनाधिकारो वृद्धस्यति-
वचनेनापोद्यते । यथाह सः । अनीशाः पूर्वजाः पित्रोर्भातुर्भागे विभक्तजः । पुत्रैः सह विभक्तेन पित्रा यत् स्वयमर्जितम् । विभक्तजस्य तत् सर्वमनीशाः पूर्वजाः स्मृताः । यथा धने तथाहं च दानाधानक्रयेषु च । परस्परमनीशास्ते मुक्ताशौचोदकक्रियामिति ॥

13. संकटोपधनहारकोऽथ तत्स्त्रियः परिपाजनीयास्तत्कन्याश्च विवाहपर्यन्तं पोषणीयाः संस्कारैर्याच्येत्वाहृतुः शङ्खगारदौ संकटिर्न प्रक्रम्य । आहृत्यामप्रजाः प्रेया-
त्कश्चिच्चेत् प्रज्जेत वा । विभजेरन् धनस्तस्य श्रेष्ठास्ते स्त्रीधनं विना । भरखद्यास्य कुर्वीरन् स्त्रीयामाजीवनस्तयात् । रक्षन्ति श्रय्यां मर्तुश्चेदाष्टिन्दिरितरासु च । या तस्य दुहिता तस्याः पितृयोऽष्टो भरखे मतः । आसंस्काराद्धरेद्भागं परतो विभ्रयात्प-
तिरिति ॥ इतरासु भर्तृश्रय्यामरक्षन्तीषु दुर्हतास्त्रिति यावत् । आसंस्कारादि-
त्वभिविधावाक् तेन विवाहकदम्बमपि ज्ञभ्यते ।

इति संकटविभागः ।

CHAPTER V.

PART I.

1. अथ स्त्रीधनविभागं वक्तव्यं तत्स्वरूपन्तावमिच्छ्यते । तत्र मनुः । अथगन्ध-
ध्यावह्निकदत्तञ्च प्रोतिकर्मणि । आहृताहृतिपितृप्राप्तं वष्ट्रिधं स्त्रीधनं स्मृतमिति ॥
वष्ट्रिधमिति न्यूनसंख्याव्यवच्छेदपरज्जाधिक्यनिरासाय । अतएव योगीश्वरेण पितृमाहृ-
यतिआहृदत्तमध्यभुगपागतम् आधिवेदनिष्कायञ्च स्त्रीधनं परिकीर्तितम् ॥ इत्याद्यशब्द-
उपात्तः । विद्युनापि वडधिकाणि स्त्रीधनान्युक्तानि । स यथाह । पितृमाहृतसुतआहृदत्त-
मध्यभुगपागतम् । आधिवेदनिष्कं बन्धुदत्तं शुक्लमन्वाधेयमिति स्त्रीधनमिति । नारदः ।
अथप्रध्यावह्निकमर्हदायकयैव च । आहृदत्तं पितृभ्याञ्च वष्ट्रिधं स्त्रीधनं स्मृत-
मिति । वष्ट्रिधत्वं मानववदेव आख्येयम् ।

२. स्त्रीधनशब्दस्यायं यौगिकः स्त्रीस्वामिकन्धनमिति । न तु पारिभाषिकः । योगसम्भवे परिभाषाया अन्याय्यत्वात् । अतएव योगीश्वरेण रिक्थक्रयादिसाधारण-
स्त्वोपायसंग्रहायाद्यपदं प्रयुक्तम् ।

ननु च क्वचित् स्त्रीधनत्वनिषेधोऽनुपपन्न एव सति स्यात् । नहि स्त्रीस्वामिकत्वं
तत्र निषेधो शक्यते । बाधात् । यथाह कात्यायनः । तत्र सोपधि यद्दत्तं यच्च योग-
वशेन वा । पित्रा भ्रात्राथवा पत्न्या न तत् स्त्रीधनमुच्यत इति ॥ उपधिसत्त्वादा-
वेवेदमस्य दत्तं त्वया धार्थ्यमनङ्गारादि नान्यदेति नियमस्तत्पूर्वकदत्तं सोपधि । योगश्च
न दायादाणां कन्यायै दत्तमिदन्तज्जनङ्गणं विभाज्यमिति । शिष्यप्राप्तं सत्त्वादिभ्यः
प्रीत्या प्राप्ततदपि न स्त्रीधनमित्यप्याह स एव । प्राप्तं शिष्यैस्तु यत् किञ्चित्प्रीत्या
चैव यदन्वतः । भर्तुः स्वान्वन्तदा तत्र शेषेण स्त्रीधनं स्मृतमिति । पारिभाषिकत्वे
भ्रात्रादिदत्तत्वेन प्राप्तं स्त्रीधनं प्रतिविध्यते । तेनैतस्माद्भिन्नमेव पित्रादिदत्तं शिष्यादि-
प्राप्तमिदं वा स्त्रीधनमिति परिभाष्यत इति चेत् ।

उच्यते । नात्र स्त्रीधनत्वनिषेधः । किन्तु तत्कार्यविभागादिनिषेधः । अत-
एवोत्तरस्त्रोके तत्र भर्तुः स्वान्वमित्युक्तम् । भर्तुस्तद्विनियोगे स्यातन्मग्न स्त्रिया-
इत्यर्थः । प्रथमस्त्रोके तु स्त्रीस्वत्वनिषेधोऽपि सम्भवति उपधियोगपदयोः पदादानात् ।
तादृशदाने च स्वत्वाभावस्य प्रसिद्धत्वात् । योगाधमनविक्रीतं योगदानप्रतिग्रहम् ।
यत्र चाप्युपधिसम्पत्तत्सर्वं विनिवर्त्तयेदिति मनुवचनात् । भार्या पुत्रश्च दासश्च त्रय-
एवाधनाः स्मृताः । यत्ते समधिगच्छन्ति यस्य ते तस्य तज्जनमित्यपि वचनम्भा-
र्याविवधे शिष्यादिप्राप्तपरमेव । एकमूलकत्पनाणाधवात् ।

३. अध्यग्रादिस्वरूपमिदं कालायायेन । विवाहकाले यत् स्त्रीभ्यो
दीयते ह्यग्निसन्निधौ । तदध्यग्निकृतं सद्भिः स्त्रीधनं परिकीर्तितम् ॥ यत्पुनर्हभते
नारी नीयमाना पितुर्गृहात् । अध्यावह्निकस्नानं स्त्रीधनतदुदाहृतम् । प्रीत्या
दत्तं तु यत्किञ्चिच्छ्रमा वा श्वशुरेण वा । पादवन्दनिकश्चैव प्रीतिदत्ततदुच्यते ॥
विवाहात्परतो यत्तु कन्यं भर्तृकुलात् स्त्रिया । अन्वाधेयन्तु तत्प्रोक्तं यत्कन्यं स्वकु-
लात्तथा ॥ गृहेपक्षरवाद्यानां दीक्षाभरणकर्मणाम् । मुख्यं कन्यन्तु यत्किञ्चि-
तच्छुक्लं परिकीर्तितम् ॥ ऊज्या कन्यया वापि पत्युः पित्रगृहेऽपि वा । आतुः
सक्ताग्रात्यिचोर्वा कन्यं सौदायिकं स्मृतम् ॥ भर्तुः सक्ताग्रादिति कल्पतर्क्यादौ पाठः ।
अध्यग्रादिशब्दास्तु योगरूढास्तादृशस्त्रीधनस्य प्रयोगात् । गृहेपक्षरवादीनां
यन्मुख्यं कन्यार्पणोपाधित्वेन वरादिभ्यः कन्याभरणरूपेण गृह्यते तच्छुक्लमिति
मदनरत्ने आस्तातम् । मिताक्षरायान्तु यद् गृहीत्वा कन्या दीयते तच्छुक्लमित्युक्तम् ।
उभयत्रापि गृहीदृषां पित्रादीनां कन्याया इदमित्युद्देशो विवक्षितः । अन्यथा
तत्स्वत्वाभावेन स्त्रीधनत्वव्यवदेशत्वानुपपत्तेः । जीमूतवाहनेन तु कर्मिणामिति
यदित्वा गृहादिकर्मिभिः शिष्यमिक्षत्कर्मकरेण भर्तादिप्रेरकायं स्त्रियै यदुत्सोच-
दानं तच्छुक्लं तदेव मुख्यमज्ञातार्थत्वादिति आस्तातम् । पुनश्चोक्तम् । यदानेन-

भर्तृगृहे शुष्कान्तपरिशीर्षितमिति आसोक्तं वा । भर्तृगृहगमनार्थमुक्तोच्चादि यद्दत्तं तच्छुष्कमित्यर्थः इति । तदुभयमपि स्त्रीस्वामिकं भवत्येव तस्या एव दत्तत्वादिति तत्र स्त्रीधनत्वव्यपदेशोऽन्यस्त्रीधनवत् सुगम एव ।

आधिवेदनिकं स्मरन्तरविवाहकाले पूर्वभार्यायै यद्वीयते । यदाह याज्ञवल्क्यः । अधिविघ्नस्त्रियै दद्यादाधिवेदनिकं समम् । न दत्तं स्त्रीधनं यासान्दत्ते तज्ज्ञे प्रकल्पयेदिति ॥

4. पित्रादिभिर्जीवनायं स्त्रीभ्यो धनदाने विप्रवेशमाह कात्यायनः । पित्रमाहपतिभ्रातृभ्रातिभिः स्त्रीधनं स्त्रियै । यथाशक्त्या द्विसाहस्राद्दत्तं स्यावरादृते । स्यावरेतरधनं यथाशक्ति कार्षापणसहस्रद्वयपर्यन्तं देयमित्यर्थः । आसोऽपि । द्विसहस्रः परो दायः स्त्रियै देयो धनस्य तु । आद्विसहस्रादिति कात्यायनेन पर इति च आसेनोक्तेरितोऽधिकं धनिनापि न स्त्रीभ्यो देयमिति दर्शितम् । अथच नियमः प्रतिवत्सरमसहस्रदर्पणे ज्ञेयस्तेनानेकवत्सरेषु जीवनायं दीयमानमितोऽधिकमपि भवति चेन्न दोषः । जीवनार्थत्वाद्दानस्य यावज्जीवञ्च द्विसाहस्रमात्रेण तन्निर्वाहोपासम्भवात् ।

5. स्त्रीधनेऽपि भर्जनमतिमन्तरेण स्त्रीबाह्यं स्नातन्मममित्राह मनुः । न निर्हारं स्त्रियः कुपुः कुटुम्बादङ्गमध्यकात् । स्वकादपि च विताडि स्वस्य भर्तुरनाशयेति ॥ निर्हारो व्ययः ।

अपि तु स्त्रीधने तासां स्नातन्मममिति । यदाह सौदायिकस्वरूपमुक्त्वा कात्यायनः । सौदायिकं धनं प्राप्य स्त्रीणां स्नातन्मममिष्यते । यस्मात्तदावृष्ट्यायं तैर्दत्तमुपजीवनम् । सौदायिके सदा स्त्रीणां स्नातन्मम परिकीर्तितम् । विज्ञेये चैव दाने च यथेष्टं स्यावरेष्वपि ॥

भर्तृदत्ते तु स्यावरेतरएव स्नातन्मममित्राह नारदः । भर्ता प्रीतेन यद्दत्तं स्त्रियै तस्मिन् मृतेऽपि तत् । सा यथाकाममश्रीयाद्द्यादा स्यावरादृते । स्यावरे भर्तृदत्ते स्त्रिया निवासाद्युपभोगमात्रं न दानविक्रयादिकमित्यर्थः । अपुत्रा ज्ञयनं भर्तुरित्यादि कात्यायनवचोऽपि भर्तृदत्तस्यावरविषयमेव नारदैकवाक्यतयेति चेन्नित् । अस्माभिस्तु पत्नी दुहितर इति आस्थानावसरेऽस्य विषयः प्रपञ्चितः ।

6. पुत्रव्याहामपि कस्मिन्नपि स्त्रीधने न स्नातन्मम स्नात्याभावादित्याह कात्यायनः । न भर्ता नैव च सुतो न पिता भ्रातरो नच । आदाने वा विसर्गे वा स्त्रीधने प्रभविष्यत्वः । यदि त्वेकतरोऽप्येषां स्त्रीधनं भक्षयेद् वनात् । सवृद्धिर्न स दाप्यः स्याद्वृद्धैव समाप्नुयात् । तदेव यद्यनुज्ञाप्य भक्षयेत् प्रीतिपूर्वकम् । मूकमेव तदा दाप्यो यदा स धनवान् भवेत् । अथ चेत्सद्विभार्यः स्यान्न च तां भजते पुनः । प्रीत्या विच्छेदमपि चेत् प्रतिदाप्य स तद् वनात् । यासांश्चादनवासानामुच्छेदो यच्च योचितः । तत्र स्वमाददीत स्त्री विभागं रिविद्यनान्ताया ॥

स्त्रिया धनं गृहीत्वा यद्यपरभार्याया सह वसत्येनाश्चावमानीते तदा गृहीतं तज्जनं दाप्या वनादाप्यः । भस्माश्चादननिवासान् यदि भर्ता न ददाति तदा तेऽपि

स्त्रिया वनाद् ग्राह्यास्तत्पर्याप्तं धनं वा ग्राह्यमिति स्त्रीकद्वयस्याथ चेदित्यस्यार्थः । इदमपि तस्या दोषराहित्ये बोध्यं दुष्टा पुनः किमपि स्त्रीधनं न जम्बत इत्याह स एव । अपकारक्रियायुक्ता निर्बन्धा चार्थनाशिका । अभिचाररता या च स्त्रीधनं न तु सार्हति । नार्हतीत्यनेन तया जम्बमप्याश्लिष्य ग्राह्यमिति दूषितम् । अपकारक्रियायुक्ता सदा भर्तृप्रतिकूलाचरत्नपरा । निर्मर्यादायार्थनाशिकेत्यपि पाठः ।

7. देवताः । वृद्धिराभरणं मुखं कामञ्च स्त्रीधनं भवेत् । भोक्त्री तत् स्वयमेवेदं पतिर्नार्हतीत्यनापदि । यथा भोक्ते च भोगे च स्त्रियै दद्यात् सदृज्जिकमिति । वृद्धिर्बर्जनायं पित्रादिना दत्तमिति स्मृतिचन्द्रिकायाम् । मदनरत्ने तु वृत्तिरिति पठितम् । वृत्तिर्जीवनायं पित्रादिभिर्दत्तमिति व्याख्यातञ्च । कामो गौर्यादि-प्रीत्यर्थं यत्कथ्यते कुतश्चित् । यथा आपदमन्तरेण । मोक्षस्वागोदानमिति यावत् । अननुज्ञातस्यागभोगविषयमेतत् । तदनुज्ञया त्वनापद्यपि न दोषः । स्वयमेवेत्येव-कारः स्वापत्नानां द्युदासार्थः । भर्तृद्युदासस्य पतिर्नार्हतीत्यनेनाभिधानात् । भर्तृ-द्युदासे ततो बहिरङ्गानां भ्रात्रादीनां द्युदासस्यापि दद्यात्पूयिकया सिद्धत्वात् । अनापदीत्यभिधानादापदि न दोषः । अतएव पुत्रार्तिहरणे चापि स्त्रीधनभोक्तु-मर्हतीति तस्यैव वाक्यशेषः । पतिरित्यनुषङ्गः । पुत्रग्रहणं कुटुम्बोपलक्षकं तस्याति-र्मर्यादाभावनिमित्ता पीडा तस्या हरणे । चण्डालादन्यस्मिन्नपि धनाभावनिमित्ते सङ्घटे स्त्रीधनमननुज्ञातमपि पतिरित्यनु भोक्तुञ्चार्हतीत्यर्थः ।

ननु परधने त्वागभोगयोः स्यादनुज्ञया विना कथमर्हता बाधितानेन बोध्यते । अननुज्ञायान्वनापद्यपि न विरोधः । उच्यते । वचनवक्तादृशविषये व्यये स्वत्वमेव तस्य तत्रेत्यदोषः । अतएव योगीश्वरोऽपि । दुर्भिक्षे धर्मकार्ये च व्याधौ सम्प्रति-रोधके । गृहीतं स्त्रीधनं भर्ता नाकामो दातुमर्हति । धर्मकार्ये आवश्यकं नित्ये नैमित्तिके च । सम्प्रतिरोधके दृष्टाद्यर्थं राज्यावरोधे कृते । वाचस्पतिकु सम्प्रति-रोधक इति व्याधिविशेषणं कार्यानुष्ठानबाधक इति च तदर्थं इत्याह । नाकामो दातुमर्हतीत्यपि दारिद्र्यादिदत्तदानासामर्थ्ये बोध्यं । सति तु सामर्थ्ये दुर्भिक्षादिगृही-तमप्यवश्यं देयम् । एतावतैव वचनोपपत्तौ सामर्थ्येऽप्यदानमिच्छेत्यस्य कल्पयितुमन-र्हत्वात् । पतिग्रहणादापद्यपि पत्युरेव पत्नीधनग्रहणाधिकारो प्रतिदानक्षेत्र्या गान्यस्येति ज्ञेयम् ।

8. भर्ता दातुं प्रतिश्रुतं भार्ययै तस्मिन् मृते पुत्रादिभिरास्यै देयमित्यप्याह स एव । भर्ता प्रतिश्रुतं देयमवबत् स्त्रीधनं सुतरिति । सुतग्रहणं पौत्रप्रपौत्रयो-रपणक्षयमवदित्यभिधानात् । अनेन स्त्रीधने जीवनयान्तस्यां सुतानां जन्मना ज्ञेयमपि नास्ति विभाग इति गम्यते ।

एवं स्त्रीधनमुक्तम् ।

PART II.

1. अथ तद्विभागो निरूप्यते । तत्र मनुः । जनन्यां संस्थितायान् सनं सर्वे सहोदराः । भजेरन् मातृकं रिक्त्वं भगिन्धश्च सनाभयः ॥ अत्र इन्द्रसमानार्थकचण्डोपादानात् सोदरभ्रातृभगिनीनां भिजितानां मातृधनाधिकारो गम्यते । सोदरग्रहणं भिज्जोदरव्याख्यानार्थः ।

देवकः । सामान्यं पुत्रकन्यानां मृतायां स्त्रीधनं स्त्रियाम् । अप्रजायां हरेद् भर्ता माता भ्राता पितापि वा ॥ अत्र तु इन्द्रस्यैव अवधायुत्राणां कन्यानाञ्च सहाधिकारः प्रतीयते ।

इदञ्चान्वाधेयपतिप्रोतिदत्तद्विविधस्त्रीधनविषयम् । यथाह मनुरेव । अन्वाधेयश्च यद्दत्तं पत्न्या प्रीतेन चैव यत् । पत्नौ जीवति मृतायाः प्रजायास्तद्गम्यभवेत् ॥ अन्वाधेयं पूर्वकृत्तितं यच्च पत्न्या प्रीत्या दत्तं तत् स्त्रीधनं मृतायाः मृतायाः स्त्रियाः प्रजा पुत्रदुहिद्वरूपा तस्याः सम्भवति । पत्नौ जीवतीत्यनादरे सप्तमी । जीवन्तमपि पतिमनादृत्येत्यर्थः । तस्यानधिकारस्तत्रेति यावत् । अत्र च प्रजाया इति सामान्याभिधानात् स्त्रीपुंसप्रजायाः समस्तान्वावगतेस्तुल्यवदिभन्ध मातृधनग्रहणं । न पुनः पूर्वं भगिनीनां तदभावे भ्रातृव्यामिति ।

भगिन्धश्च मनुवचनेऽनूढा ग्राह्याः । तथा च दृश्यति । स्त्रीधनं स्यादपत्न्यानां दुहिता च तदंशिनी । अप्रप्ता चेत् समूढा तु जभते मानमात्रकम् ॥ अपत्न्यानां पुत्राणाम् दुहितुः पृथगुपादानात् । तदंशिनी पुत्रसमांशिनी । मानमात्रकमिति गौरवार्थं तदनुसारेण किमपि जभते न तु पुत्रसमांशमित्यर्थः ।

अप्रप्तानामभावे प्रप्तानामपि सभर्तृकाणां भ्रातृसमभागित्वमित्याह कात्यायनः । भगिन्यो बान्धवैः सार्द्धं विभजेरन् सभर्तृकाः । विभागकाले दौहित्रेभ्योऽपि किञ्चिद्देयम् । तथा च मनुः । यास्तासां स्युर्दुहितरस्तासामपि यथार्हतः । मातामह्याधनात्किञ्चित्प्रदेयं प्रीतिपूर्वकम् । यथार्हत इत्युपयोगदारिद्र्याद्यपेक्षयेत्यर्थः । न च दौहित्रीणां तदा धनस्त्वान्वाभावात् किमिति दानमिति वाच्यम् । यथा पैटके पुत्रस्त्वैव कन्यानां दायानर्हत्वेऽपि वचनवशात्तुःश्रीयांश्चदानमेवमत्राप्युपपत्तेः । अतएव प्रीतिपूर्वकमित्युक्तम् । प्रीतिपूर्वकत्ववचनादेवानावश्यकत्वमपि सूचितमत्र । तत्र तु पतिताः स्युरदित्सुव इति दोषकीर्तनादावश्यकत्वमिति भेदः ।

2. यौतकस्तु कुमारीणामेव मातृधनम् न पुत्राणां नापि प्रप्तदुहिद्वरूपा-मित्याह मनुरेव । मातुस्तु यौतकं यत् स्यात् कुमारीभागएव स इति । युमिन्धश्च इति धात्वनुसारादिवाङ्माले एकासनोपविष्टयोर्वधूवरयोर्बान्धवैर्दीयते तद्युतयो-रिदं यौतकमिति व्युत्पत्त्या यौतकमित्युच्यते । केचित्तु विवाहे स्त्रीपुंसयोरेक-शरीरतया मिश्रता भवति । अस्थिभिरस्थोनि मांसैर्मांसानि त्वचा त्वचमिति श्रुतेः । मर्तुर्वध्वज्ज्यादिभिरज्ज्यादीन्येकीभवन्तीत्यर्थ इत्याहुः । यदेतद् हृदयन्तव तदस्तु हृदयं मम यदेतद् हृदयं मम तदस्तु हृदयन्तवेति अत्र किङ्गादिवाङ्मे

मिश्रतेत्यन्ये । युतयोर्यौतकमिति निघण्टौ । यौतकं यौतकञ्च तदिति कोषाद्यौतकमित्यपि पाठः । भट्टं गृह्णन्त्यात्युपगमनतया पिष्टं गृह्णन्त्वं मातृधनं यौतकम् । यौतकस्यैवामिश्रणमप्यर्थः । युमिश्रणमिश्रणयोरेति धातुपाठात् । युतसिद्धाविति प्रयोगाच्चेति देवस्थान्याह । तदसत् पिष्टं गृह्णन्त्यात्युपगमनतया भट्टं गृह्णन्त्वं यौतकमित्यस्यापि विनिगमकाभावे वस्तुं शक्यत्वेनास्य कल्पनामात्रत्वात् ।

कुमारीबामनेकत्वे समं स्यादश्रुतत्वादिति न्यायेन सम एव विभागो विशेषाश्रयत्वात् ।

३. यत्तन्निविधभिन्नं मातृधनं दुहिदृष्टम् । तत्रापि प्रथममप्रप्तानां तदभावे प्रप्तानां तत्रापि प्रथममप्रतिष्ठितानां तदभावे प्रतिष्ठितानां सधवानां तदभावे विधवानाम् । तथा च गौतमः । स्त्रीधनं दुहिदृष्टमप्रप्तानामप्रतिष्ठितानाच्चेति । अप्रतिष्ठिता अनपत्या निर्जना दुर्भगा विधवा वेत्तपरार्द्धेण कल्पतरुकारेण च व्याख्यातम् । प्राप्तान् इयमेव विज्ञानेश्वरादिभिः । अत्र च स्त्रीधनमिति सामान्योक्तिरपि त्रिविधप्रागुक्तस्त्रीधनभिन्नविधया । कृतचित्रिकामदनरत्नयोरेवमुक्तम् ।

४. जीमूतवाहनस्मार्तमट्टाचार्याभ्यान् प्रागुक्तं गौतमवचनं । मातुर्दुहितरोऽभावे दुहिदृष्टां तदन्वय इति नारदवचनम् । दुहिदृष्टामभावे तु रिक्त्यं पुत्रस्य तद्वेत् इति कात्यायनवचनम् । मातुर्दुहितरः श्रेयस्यत्वात् ताभ्यश्चतेऽन्वय इति योगेश्वरवचनम् । एवमन्यान्यपि स्त्रीधनस्य दुहिदृष्टात्वात्पर्यायि कृतिवचनानि प्रागुक्तमन्वादिवचनविरोधान्मातुस्तु यौतकमिति प्रागुक्तमनुवचनानुरोधान्मातुः पारिजयं स्त्रियो विभजेरिति वाञ्छिकानुसाराच्च यौतकमात्रविधयाबोध्यम् । पारिजयं परिजयनञ्च यौतकमिति यावदिति ताभ्यां व्याकृतम् । कल्पतरौ विवादचिन्तामञ्जौ च पारिजयमिति पठित्वा स्त्रीपरिच्छदादर्शकप्रतिकादीति व्याख्यातम् ।

५. विज्ञानेश्वरास्तु ।

सर्वमेव स्त्रीधनं पुत्रादिसन्धेऽपि प्रथमं दुहिदृष्टौहित्रीदौहित्रगामि तदभावे पुत्रादिगामि । अप्रजःस्त्रीधनन्तु व्यवस्थापयिष्यते । मातुर्दुहितरः श्रेयस्यत्वात्ताभ्यश्चतेऽन्वय इति योगेश्वरवचने दुहिदृष्टमात्रन्ताभ्य इत्यनेन न पराम्भश्यते किन्तु दौहित्रीदौहित्रावपि । मातुर्दुहितरोऽभावे दुहिदृष्टां तदन्वय इति नारदवचनात् । अत्र तदन्वय इत्यनेन तच्छब्देन दुहितरोऽनन्तराः पराम्भश्यते । तथा च दुहित्रन्वयो दौहित्रीदौहित्रकल्पः । तत्रापि प्रथमं दौहित्री तदभावे दौहित्रः । दुहिदृष्टां प्रसूता चेदिति वक्ष्यमाणयोगेश्वरवाक्ये दुहिदृष्टश्च दुहिदुहितरो गृह्यन्ते । साक्षादुहिदृष्टां मातुर्दुहितर इत्यत्र तेनैवोक्तत्वात् पुनस्तथापत्तिः । दुहिदृष्टामन्वय इति सामान्योक्तेर्दौहित्राधिकारोऽपि ।

पुत्राधिकारस्तु विभजेरन् सुताः पित्रोर्द्वैतव्यवस्थां सममित्यत्र पित्रोरित्येकशेषास्तुभ्यते तच्च प्रागेव प्रपञ्चितम् । ताभ्यश्चतेऽन्वय इत्यत्राप्यन्वयपदेन योग्यतया वक्ष्यन्तमाह्वयदानत्वात् दुहिदृष्टाश्च पृथगुपादानात् पुत्रादिव गृह्यन्ते । दुहित्रभावे तदधिकारप्रतिपादनार्थत्वाच्च न यौनवत्त्वम् ।

जनन्यां संस्थितायान्विति मनुवचनस्य त्वयमर्थः । सर्वे सोदरा मातृकं रिक्तं स्वाधिकारावसरे समं भजेरन् सनाभयः सोदरा भगिन्यश्च स्वाधिकारावसरे । न तु द्वयेऽपि सम्भूय विभजेरन्नित्यर्थः । इतरेतरयोगस्य इन्द्रैकश्रेयोरभावाद्प्रतीतिः । चशब्दस्य तु विभागकर्तृत्वान्वयमात्रेणाप्युपपत्तेः । यथा देवदत्तः कृषिं कुर्याद्यश्च दत्तश्चेत्युक्ते नेतरेतरयोगप्रतीतिः । वाक्यान्तरेण च द्वयोरपि मातृधनाधिकारे प्राप्तेऽपि सममित्यनेनात्रोद्भवादिविषमविभागनिरुद्धार्थं वचनम् ।

सोदरसनाभियह्यमसोदरमातृभगिनीनिरुद्धार्थम् । अतएवाधमजातिस्त्रीधनं भिन्नोदरापि प्रकृत्यजातीयसपत्नीपुत्री तदभावे च तदपत्वं गृह्णातीत्युक्तं मनुना । स्त्रियान्तु यद्वेदितमिमां दत्तं कथञ्चन । ब्राह्मणी तद्वरेत्कन्या तदपत्यस्य वा भवेदिति ॥ अत्रानपत्यक्षत्रियादिजातीयस्त्रिया इति विवक्षितं ब्राह्मणीपदस्योत्तमजात्युपलक्षणम् । अप्रजस्त्रीधनं भर्तुरित्यस्य चायमपवादः । अतश्चानपत्यवैशाधनं क्षत्रियादुहिता अनपत्यशूद्राधनञ्च वैशादुहिता गृह्णाति । तदभावे तदपत्यानि तदभावेऽप्रजस्त्रीधनमित्यस्य तत्र प्रवृत्तिः ।

तस्मात् स्त्रीधने सापत्यायाः प्राग् दुहित्राद्यधिकारस्तदनु पुत्रादीनामित्याहुः ।

6. अत्र जीमूतवाहनः । मनुवचस्यतिशङ्कलुखितवचनेषु इन्द्राश्रयणेऽपि समुच्चयवाचिचशब्देन तदर्थनाभादेववचने तु पुत्रकन्यानामिति इन्द्रस्यापि अश्रयत्वंवादेन तत्रापि चशब्दस्येतरयोगार्थकत्वौचित्याद् भातृभगिनीनां सोदराणां विभज्य सदैव धनग्रहणं युक्तम् । किञ्च । केवलदुहितृत्वमेव सकलमातृधनाधिकारे यौतके विशेषवचनमनर्थकम् । न च कुमारीपदोपादानात्तदुहितव्याख्यान्तरमिति युक्तम् । तद्वाहतेः सर्वस्त्रीधन एव यौतकादिवचनेयुक्तत्वात् । कुमार्यभावे प्रत्याद्यधिकारस्यात्राप्यवर्जनयत्वात् । तस्मात्पुत्रपुत्र्योक्तव्यवधिकार एव मन्वाद्यभिप्रेतोऽध्यग्र्यादिस्त्रीधनविषयो यौतकविषयस्तु पुत्रोमात्राधिकार इत्येव व्यवस्था । अन्वाधेयपतिप्रीतिदत्तमात्रग्रहणं मनुवचनान्तरेऽध्यग्र्याद्युपलक्षणमितरथा यौतके पृथगादम्भस्यानर्थक्यापत्तेरित्याह ।

दायतत्त्वज्ञादीनामप्येतदेव मतं ।

7. अपेक्षं प्रतिभाति अन्वाधेयादियह्यस्योपलक्षणत्वे प्रमाणाभावात्तदुभयव्यतिरिक्तसर्वमातृधने दुहित्राधिकारः प्रथमस्तदनु पुत्राधिकारः । यौतके विशेषवचनान्तु प्रत्यादिनिरुद्धार्थम् । अन्यत्रापि सा समैवेति चेत्सत्यम् । किन्तु । न नियता यौतके तु नियता । तेन यौतकं कुमार्यभावे विवाहभेदेन स्त्रीधनम्भर्तादीनामेव भवति न प्रत्यादीनामिति स्मृतिचन्निष्काकारादीनामाशयः ।

विज्ञानेश्वराचार्याख्यानव्यमभिप्रायः । सामान्यतः स्त्रीधनमात्रस्य दुहितृयाज्ञातावोधकमनन्यथासिद्धवचनानुरोधेन सङ्गोचः कर्तव्यः । न च मन्वादिवचनमनन्यथासिद्धं पुत्रकन्यानां सहाधिकारप्रतिपादकम् । पुत्राधिकारमात्रप्रतिपादनमात्रपरत्वात् । न च चशब्दइन्द्राणां सहाधिकारः । विभागकर्तृत्वान्वयेनापि तदुपपत्तेः ।

अन्यथा पितरावित्वादौ मातापित्रोस्तद्विध्यत इत्यादौ च इन्द्रैकश्रेयश्रवणे सकल-
निबन्धसम्मतः क्रमो मातापित्रो न स्यात् । विध्यवचनाद्यनुरोधात्तत्र शब्दान्वयसाहि-
त्यमात्रेण तदुपपत्तिरर्थक्रमस्त्वन्यथाप्यविबद्ध इत्युच्यते । तस्माच्चापि ताभ्य ऋतेऽन्वयः ।
दुहितृब्रह्मभावे तु रिक्त्वं पुत्रेषु तद्वेदितादियोगीश्वरकात्यायनवचनावगतार्थ-
क्रमान्यथाभावे इन्द्रशब्दादीनां शब्दान्वयसाहित्यमात्रेणोपपत्तिरस्तु न तु तदनु-
रोधेन तेषामेवान्यविषयत्वम् । सिद्धे सहाधिकारे तेषां सङ्गोचकसङ्गोचे चैषां सहा-
धिकारपरत्वमिच्छय इतीतरेतराश्रयत्वमेति ।

अन्याधेयादौ विशेषवचनमनर्थकमिति चेत् । न । यौतके चन्निष्काकारादिमत-
वदेव सार्थकत्वात् । अन्याधेयग्रहणस्योपलक्ष्यतया प्रजामात्राधिकारे तेन प्रतिपादिते
जन्यां संस्थितायाम्बित्वादिवचनेः साभ्यादिविधानमित्येवं सर्वेषां सार्थकत्वात् ।
तस्मात्सर्वं सुस्थमिति ।

मीयिधारण्यमीचरबैषु स्मृतिचन्निष्कामिताक्षरयोर्द्वयोरप्यनुसारेण द्वयमपि
निहितम् तु विविक्तम् ।

8. पुत्रादिभ्यः प्राग् दुहितृदुहितृसदनु दौहित्राब्रह्मभावाधिकार इति तु मिता-
क्षराचन्निष्कामदनरत्नकाराबामिधारण्यमीचरब्रह्मणां चाविसम्भादेन सम्मतः ।

जीमूतबाह्वनदायतस्वकारौ तु दुहितृभावे पुत्राब्रह्मेवाधिकारो न तु दौहित्र्या-
द्यधिकारानन्तरम् । तथाहि नारदवचने दुहितृब्रह्मान्तदन्वय इत्यत्र दुहितुरन्वयपदे-
नान्वयपुत्रादिवाचकेन नान्वयः सम्भवति । दुहितृपदस्य अन्यविशेषवचनस्य अन्यान्तरे
समत्वेन निराकाङ्क्षसाध्यतासम्भवात् । तच्छब्दस्यापि दुहितृत्वरूपेणैव तदुपस्थापकस्य
नैराकाङ्क्षाविशेषात् । किञ्च । याज्ञवल्क्यवचने तावत् । दुहितर इति प्रथमान्तस्य
ताभ्य इति च पञ्चम्यन्तस्य च वचनान्वययोर्गोचरान्वयपदेनान्वयाद्यवहितस्यापि
मातुरित्यस्यैवान्वयसदेकवाक्यतयात्रापि मातुरन्वयस्यैव पुत्रादिष्टं ऋते न दुहितृन्वयः ।
किञ्च । सत्सङ्गेषु तङ्गामी क्षर्षो भवतीति बौधायनवचनादन्तराङ्गपुत्राधिकार
एव प्रत्यासत्तेरुच्यते न तु व्यवहिताङ्गजदौहित्रादेरित्याहुः ।

तन्मन्त्रम् । अन्यवाचकस्य अन्यान्तरेवान्वये पुत्र इत्यादायन्वयो न स्यात् ।
तज्जगत्प्रतिसम्बन्धितयाव्याविरोधस्यत्रापि मुख्यः । अन्यथा दुहितुः पुत्र इत्यन्वाय-
न्वयो न स्यात् । तस्माच्छब्दस्युत्पत्त्यज्ञानमेवेदम् । याज्ञवल्क्यवचने च यद्यपि मातुर-
न्वयः पुत्रादिरेवोक्तस्तथापि विभजेत् सुताः पित्रोरित्यनेन प्राप्ताधिकाराब्रह्मेव
अब्रह्मदानदुहितृभावेपाधिकारत्वापगमार्थोऽनुवादः । स च दौहित्रानन्तरमप्यविबद्धः ।
सत्सङ्गेष्वेवमिति बौधायनवचनम् । मातृसाधारण्येन पुत्राब्रह्मभावाधिकारमात्रमङ्गपदस्य
चापत्वाभावाच्चकत्वात् पुत्रदुहितृसाधारण्यमधिकारं प्रतिपादयवचनान्तराविबद्ध-
प्रत्यासत्त्यैव आस्तातुं युक्तमिति न किञ्चिदेतत् ।

9. सन्तानाभावे त्वाह योगीश्वरः । अतीताब्रह्मप्रपत्तिं बान्धवाक्यदवाप्नुतुः ।
अप्रपत्तिं दुहित्रादिप्रपौत्रपर्यन्तरहितायामतीतावां मृतावां बान्धवा बन्धनमन्त्रो-
क्तास्तत्क्षीयनमवाप्नुतुः ।

विवाहभेदेन व्यवस्थया बान्धवानामधिकारमाह स एव । अप्रजः स्त्रीधनभर्तु-
र्ब्राह्मादिषु चतुर्व्यपि । दुहितृणां प्रसूता चेच्छेषेषु पित्रगामि तदिति ॥ चतुर्वृ ब्राह्म-
दैवार्घप्राजापत्येषु । अपिशब्दाद्गान्धर्वपरिग्रहः । यदा अतदुगणसंविज्ञानवज्जोहिणा
ब्राह्मभिन्ना दैवार्घप्राजापत्यगान्धर्वान्धत्वारः । तेन ब्राह्मदैवार्घगान्धर्वप्राजापत्येषु
यज्जनम् । अप्रजायामतीयां भर्तुरेव तदिष्यत इति मनुवचनाविसम्बादः ।

ब्राह्मादिविवाहोदाया धनमनपत्न्याया भर्तुर्भवति । तदभावे भर्तुः प्रत्यासन्ना-
गाम् । खामिप्रत्यासत्तेर्भर्तृवान्तराये भर्तृप्रत्यासत्तेरेव पुरस्कारणीयत्वात् ।

शेषेष्वासुरादिषु परिणीतायास्तु पित्रगामि । एकशेषेण मातापित्रगामि ।
तत्रापि प्राज्ञादृगामि तदनु पित्रगामि । पितरावित्वत्रोक्ताध्यायात् । विरुद्धवचनान्त-
राभावाच्च । अतएव मनुना । यत्त्वस्याः स्याज्जनं दत्तं विवाहेष्वासुरादिषु । अतीता-
यामप्रजसि मातापित्रोस्तदिष्यत इति ॥ इन्द्रे मातृशब्दपूर्वनिपातेन मातुः प्राथम्यम-
वगमितम् ।

कन्याधने च मातुरभावे पितुरधिकारश्चवशादत्रापि तथैवौचित्यात् । यथाह
बौधायनः । रिक्थं मृतायाः कन्याया मृच्छीयुः सोदराः स्वयम् । तदभावे भवेन्मातुस्त-
दभावे भवेत्पितुरिति ॥ मातापित्रोरभावे तत्प्रत्यासन्नगामि ।

पूर्वोक्तेषु सर्वेष्वेव विवाहेषु प्रसूतापत्यवती चेत् दुहितृणां तज्जनम् । दुहितृ-
शब्देन चात्र दुहितृदुहितरो लक्ष्यन्ते इति प्रागेवोक्तम् । तत्राप्यनुदादिक्रमेण गौत-
मादितो दुहितृधनग्रहणकाले दौहित्रीभ्योऽपि प्रीत्या किञ्चिदानमिति च प्रागेव
निरूपितम् । दौहित्रीणाञ्च मातामहीधनग्रहणं भिन्नमाहक्रायां विषयानां मातृद्वारेण ।
पौत्राणां पित्रद्वारेणैव । प्रतिमाह वा स्वर्गोभाग इति गौतमस्मरणात् ।

10. जीमतवाहनम् । ब्राह्मादिविवाहेषु यज्जनं तदेवानेन व्यवस्थाप्यते ननु
तत्तद्विवाहोदायाः सर्वे धनम् । ब्राह्मादिषु यज्जनमिति सम्बन्धे वर्त्तमानसम्बन्धे कृत-
कालनक्षत्रातस्तदुक्तस्त्रीपरत्वेऽतीतविवाहक्रियाद्वारकसम्बन्धे कृतनक्षत्राया जघन्यत्वा-
दित्याह ।

तदनुगामी दायतत्त्वकदप्येवम् ।

तदपेक्षणम् । पूर्ववचने अप्रजःस्त्रीधनं बान्धवा मृच्छीयुरिति सामान्यत उक्ते
कीदृक्षा अप्रजसः के बान्धवा मृच्छीयुरित्येवाकाङ्क्षोदयाद् ब्राह्मादिपदानां तद्विशेष-
त्वस्यौचित्यात् । यच्च वर्त्तमानभूतसम्बन्धकृतं विनिगमकमुक्तं तदपि तुच्छम् । विभाग-
कालोऽतीतत्वस्योभयत्राविशेषात् । धनशामकाले वर्त्तमानत्वस्य चाप्रयोजकत्वात् ।
विवाहजन्यभार्यात्वसम्बन्धस्यान्तरङ्गत्वाच्च ।

11. यत्तु सर्वेष्वपि विवाहेषु पित्रोः सकाशात् तथा प्राप्तं विवाहोत्तरं तद्
आहृत्यमेव । यदाह कात्यायनः । पित्रभावेन यदत्तं दुहितुः स्यावरं धनम् । अती-
तायामप्रजसि आहृत्यगामि तु सर्वदा ॥

विश्वरूपजीमूतवाहनौ तु कन्यादद्यायां यत्पितृभावं दत्तं तद् आहृत्यगामि । विवा-

ज्ञात्वरतो लब्धस्यान्वाधेयत्वात् । विवाहकाललब्धस्य च विवाहभेदेन भर्तृगामित्वा-
न्मातापितृगामित्वाच्चेत्याहृतुः ।

तन्न । स्थावरविषयत्वादस्याविरोधात् । न च दण्डापूपिकाया स्थावरग्रहणे
जङ्गमग्रहणं आहृत्यामायात्वेवेति वाच्यम् । अपवादे तद्व्यायाप्रवृत्तेः ।

12. शुल्कान्तु सोदराग्रामेव । भगिनीशुल्कां सोदर्याग्रामिति गौतमवचनात्
सोदराभावे मातुः । ऊर्ध्वं मातुरिति तद्वचनादेव । पूर्व्वञ्चैक इति तु परमतम् ।

13. बन्धुदत्तं प्रथममप्रजसो भृत्याया बन्धूनां तदभावे भर्तुः । बन्धुदत्तान्तु बन्धू-
नामभावे भर्तृगामि तदिति कात्यायनवचनात् ।

14. पूर्व्वोक्ताप्रजःस्त्रीधनाधिकार्यभावे त्वाह दृष्टस्पतिः । मातृव्यसा मातृजानी
पितृव्यस्त्री पितृव्यसा । श्वश्रूः पूर्व्वजपत्नी च मातृतुल्याः प्रकीर्तिताः । यदासामौरसो
न स्यात् सुतो दौहित्र एव वा । तत्सुतो वा धनन्तासां स्त्रीयाद्याः समाप्नुयुः ॥ श्वश्रू-
रसपदेन पुत्रपुत्र्योरपादनन्तयोः सर्व्वापवादकत्वात् । अपवादक्रमश्च प्रागुक्त एव ।
सुतपदेन च सपत्नीपुत्रस्य । सर्व्वासांमेकपत्नीनामेका चेत् पुत्रिणी भवेत् । सर्व्वासा
स्तेन पुत्रेण प्राह पुत्रवती मंनुरिति मनुवचनात् । न तु सुतपदमौरसविशेषणम् । आन-
र्थक्यात् सपत्नीपुत्रसङ्गवेऽपि स्त्रीयाद्यधिकारापत्तेरनादित्यवहारविरोधाच्च । तथा
च दौहित्राभावे श्वश्रूसपुत्रादिसदभावे सपत्नीपुत्रः । तत्सुत इति तच्छब्देन व्यवहित-
योराौरससपत्नीपुत्रयोरापादानं नानन्तरस्यापि दौहित्रस्य दौहित्रपुत्रस्य तस्य पिण्ड-
दाने बहिर्भावात् । तथा च दौहित्रपर्य्यन्ताभावे प्रथममौरसस्तदनु तत्पुत्रपौत्राः ।
पुत्रपौत्रैर्ऋणं देयमिति ऋणापकरणधिकारिणां पिण्डदानाधिकारिणाञ्च तेषामेव
रिक्थग्रहणौचित्यात् तदभावे सपत्नीपुत्रतत्पुत्रतत्पुत्राणाम् । तेषामेव तदा पिण्डदाह-
त्वाद्दद्यापकर्तृत्वाच्च । प्रागुक्तमनुवचनाच्च । तदेषामभावे सत्सपि श्वश्रुरादिषु सपिण्डे-
ष्वनन्यगतिर्नैतद्वचनबलाद्भगिनीपुत्राद्यानामेव मातृव्यसादिधने प्रत्यासत्तितारतम्येना-
धिकारः ।

15. सुधादीनां तु यासांश्चादनमात्रमाप्तम् । वचनविरोधे सपिण्डवत्प्रत्यास-
त्तेरप्रयोजकत्वात् । तस्मात् स्त्रियोनिरिन्द्रिया अदायादा इति श्रुतेः । अनिरिन्द्रियाश्च-
दायाश्च स्त्रियोऽतमिति स्थितिरिति तन्मूलकमनुवचनाच्च । इदं प्राहिकाया यत्र
कण्ठोक्तः पत्नीदुहितर इत्यादौ यासां स्त्रीबान्धनाधिकारस्तासानेव । अन्यासान्तु
श्रुतिमनुवचनाभ्यां दायग्रहणनिषेधश्चेति श्रुतिचन्द्रिकाकारहरदत्तादीनाम्नास्त्रिबा-
त्यनिबन्धुनाम्नीमूतवाहनादिपौरुषसर्व्वनिबन्धुनां सिद्धान्ताच्च ।

इति स्त्रीधनविभागः ।

CHAPTER VI.

1. अथ विभागकाले केनचिदपक्रुतस्य पश्चाद् ज्ञातस्य विभागप्रकारः । तत्र मनुः । ऋणे धने च सर्वस्मिन् प्रविभक्तौ यथाविधि । पश्चाद्दृश्यते यत्किञ्चित्कृत्यं समतान्नयेत् । योगीश्वरः । अन्योन्यापहृतम्ब्रं विभक्तैर्यत्र दृश्यते । तत् पुनस्ते समैरं-
शैर्विभजेरन्निति स्थितिः ॥ अत्र समपदादुद्धारविभागो निषिद्धः । विभजेरन्निति वच-
नाद् येनैव दृष्टन्तेनैव न ग्राह्यं नाप्यपहृतेऽप्यन्दातयमिति बोध्यते ।

2. एतावता वचनार्थवत्त्वे स्तेयदोषाभावः समुदायद्रव्यापहारे स्वबुद्ध्या गृही-
तत्वादिति केषाञ्चिद्वचनं प्रजापः । साधारणद्रव्ये परस्वत्वस्यापि सत्वेन परस्वापहारस्य
स्तेयपदार्थस्यावारणीयत्वात् । अथ परकीयबुद्ध्या न गृहीतमिति न स्तेयमित्युच्यते । तत्र
अपहृते परकीयबुद्धेरावश्यकत्वात् । अतएवापहृतमित्युक्तम् । न तु मनुना व्येकस्यैव
समुदायद्रव्यापहारे दोषो दर्शितो न कनीयसाम् । यो सोभाद्भिनिजुर्वीत व्येष्टो
भ्रातृन् यवोयसः । सोऽव्येष्टः स्यादभागश्च नियन्त्यश्च राजभिरिति ॥ सत्त्वम् परन्तु
सम्भावित अस्य पितृस्थानीयस्य व्येकस्यापि दोष उक्ते तत्परतन्त्राणां पुत्रस्थानीयानान्-
दृष्टापूपन्यायेन दोषः सुतरामुक्त एव भवतीति । अतएव समुदायद्रव्यापहारे समवि-
भागवचनस्य स्तेयदोषाभावपरत्वमाचक्षाणा अनेन मनुवचनेन दूरापास्ताः । अविशे-
षेण दोषप्रतिपादिकया श्रुत्या च यथा । यो वै भागिनम्भागान्मुदते चयते न सः ।
अथ वेनन्न चयतेऽथ पुत्रमथ पौत्रश्चयत इति । यो भागिनम्भागान् भागान्मुदते निर-
स्यति । भागान्तस्मै कथञ्चिद्दलाद् वक्ष्यन्तया वा न प्रयच्छतीति यावत् । सभागान्मुद्र एनं
नेत्तारश्चयते नाशयति दोषवशात् । यद्येनन्न नाशयति तस्य पुत्रं पौत्रं वा नाशय-
तीति श्रुतेरर्थः । श्रुत्यङ्गास्तु प्रजपन्तु नाम साधारणद्रव्यस्यापि परस्वत्वेनापहारपदार्था-
नपायादित्युक्तमेव । यथा मौढ्ने चरौ विपन्ने सादृश्यात्प्रतिनिधितया माषेषु गृह्यमाणेषु
मुद्रावयवबुद्ध्या गृह्यमाणत्वादयश्चिया व माषा इति निषेधो न प्रवर्तते मुद्रावयवबुद्ध्या
गृह्यमाणत्वादिति पूर्वपक्षिते निषेधस्य प्राप्तिमात्रापेक्षितत्वात्तत्रापि माषावयवानाम-
प्यवर्जनीयग्रहणं यच्च साधनत्वञ्चेति निषेधप्रवृत्त्यनपायात्प्रतिनिधितयापि तदनुपादानं
सिद्धान्तितम् ।

3. राज्ञे तु भागिभिर्न निवेदनोयं राज्ञे निवेदितमपि तेन सामादिनैव दापनी-
यमिति प्रीत्यविच्छेदादिदृष्टप्रयोजनकमेव कात्यायन आह । बन्धुनापहृतं द्रव्यम्बलाग्नैव
प्रदापयेत् । अविभागकालेऽनेन वज्रमुक्तमित्यपि न वक्तव्यं युक्तमपि राज्ञा न ग्राह्यमि-
त्याशयेनाह स एव । बन्धूनामविभक्तानामभोगैव निवर्त्तयेदिति । नहि न्यूनाधिक-
भोगो वारयितुं शक्योऽवर्जनीयत्वादितिभावः । एवं दृष्टार्थतयैवापपत्तौ नास्यापि
स्तेयदोषाभावपरत्वमदृष्टार्थत्वापत्तेस्तस्मादत्रापि स्तेयप्रायश्चित्तं राजदण्डश्च भवत्येव-
त्यवधेयम् ।

CHAPTER VII.

1. अथाविभाव्यम् । तत्र योगीश्वरः । पितृद्रव्याविरोधेन यदन्यत् स्वयमर्जितम् । मैत्रमौद्वाहिकश्चैव दायादानां तदु भवेत् । क्रमादभ्यागतं त्रयं हृतमभ्युद्धरेत्तु यः । दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च ॥ पितृद्रव्याविरोधेनेति सर्व्वशेषः । स्वातन्त्र्ये पितृद्रव्योपघातेन यन्मैत्रादिकं तस्याप्यविभाव्यत्वापत्तौ महाजनाचारविरोधो विद्यालब्धे नारदवचनविरोधश्च । कुटुम्बन्विभृत्याद्वातुर्थ्यो विद्यामधिगच्छतः । भागं विद्याधनात्तस्मात् स लभेताश्रुतोऽपि सन्निति ॥

कात्यायनस्त्वविभाव्यविद्याधनलक्ष्यमुखेनैतदेव द्रष्टव्यं यथाह । परमहोपभोगेन विद्या प्राप्तान्यतस्तु या । तथा प्राप्तन्धनं यत्तु विद्याप्राप्तं तदुच्यत इति ॥ मनुस्मृत्युमाह । अनुपपन्नं पितृद्रव्यं श्रेष्ठं यदुपार्जयेत् । दायादेभ्यो न तद्दद्याद्विद्यया लब्धमेव च ॥ श्रेष्ठं सेवादिना ।

क्रमादभ्यागतायाम्पितृद्रव्याविरोधेनाद्धतायामपि भूम्यां विशेष उक्तः शङ्केन । पूर्व्वनष्टान्तु योभूमिमेकश्चेदुद्धरेत् अमात् । यथाभागं लभन्तेऽन्ये दत्वांश्चन्तु तुरीयकमिति । उद्धर्ते चतुर्थांशमुद्धरन्मूल्यमधिकन्दत्वांश्चतुर्थं सर्व्वे समं विभजेद्वित्यर्थः । यद्यप्येतादृशाविभाव्यत्वं यद्येन लब्धं तत्तस्यैवेति न्यायादेव प्राप्तं तथापि प्राये व्यवहारशाल्के न्यायसिद्धानुवादकान्येव वचनानीति परिभाषाप्रकरणे प्रपञ्चितमिति न दोषः ।

2. अविभाव्यान्तरमप्युक्तं मनुना । वस्त्रम्पत्रमण्यङ्गारं कृतांशमुदकं स्त्रियः । योगक्षेमं प्रचारश्च न विभाव्यं प्रचक्ष्यते ॥ पत्रं वाहनम् । वस्त्रादि यद्येन हृतं तत्तस्यैव । अहृतन्तु विक्रयाद्यर्थं विभाव्यमेव । कृतांशं पक्वान्नं सर्व्वैर्यथाशक्ति भोक्तव्यं न तु तोलयित्वा विभाव्यम् । उदकमुदकाधारः कूपदिः सर्व्वैर्यथोपयोगमुपभोक्तव्यः । स्त्रियोदास्योविषमा न विभाव्याः पर्यायेण कर्म कारयितव्याः । पित्रवरज्जास्तु समा अपि न विभाव्याः । स्त्रीष्ववरज्जास्तु न विभाग इति गौतमवचनात् । योगक्षेमशब्दाभ्यामिष्टापत्ते उच्यते । तयोरविभाव्यत्वं पितृद्रव्यविरोधेनार्जितयोरपि दृष्टान्ततयोच्यते । न हि स्वतः फलतो वा तस्य विभागः सम्भवति पैतृकस्य तु सुतराम् । तथा चाह लौगाक्षिः । क्षेमम्पुनर्न योगमिष्टमित्याहुस्तत्त्वदर्शिनः । अविभाव्ये च ते प्रोक्ते शयनासनमेव च ॥ इति योगक्षेमशब्देन तत्कारिणो राजमन्त्रिपुरोहितादय उच्यन्ते इति केचित् । शस्त्रक्षामरोपानमभृतय इत्यन्ये । प्रचारो गृह्यारामादिप्रवेशनिर्गममार्गः । तस्याप्यविभाव्यत्वम् ।

3. पितृहृतं वस्त्रादिकं आहुभोक्ते दातव्यम् । यथाह बृहस्पतिः । वस्त्रालङ्कारशय्यादि पितुर्थं वाहनादिकम् । गन्धमास्त्रैः समभ्यर्थ्य आहुभोक्ते तदर्पयेदिति ॥

4. स्त्रीहृतोऽप्यलङ्कारो न विभाव्यः । पत्यौ जीवति यः स्त्रीभिरलङ्कारो हृतो भवेत् । न तम्भजेरन्दायादा भजमानाः पतन्ति ते इति । हृत इत्यनेनाहृतस्य विभाव्यत्वमेव । पत्यौ जीवतीत्यनेन पतिजीवनचिह्नतया यत्र देशे यो धार्य्यते स न विभाव्य इति सूचितम् ।

5. पिष्टप्रसादलब्धस्यापि न विभागः । पिष्टप्रसादाद् भुज्यन्ते वस्त्राद्याभरणानि च । भुज्यन्ते इति वचनादविभाज्यत्वम् । तथा पिष्टदत्तस्यापि पिष्टभ्यां यस्य यद्वत्तन्तत्तस्यैव धनम्भवेदिति च स्मरणात् । पिष्टप्रसाददानप्रोतिदाने अथौचित्यानुरोधेनैव ज्ञेये । न तु यथाकामम् । महाजनाचारविरोधात् ।

6. पिष्टद्रव्याविरोधोपार्जितप्रपञ्चो भूयःसु शौर्यादिविषयमादाय कृतिवचःसु दृश्यते स ग्रन्थवित्तरभिप्राय न लिख्यते ।

CHAPTER VIII.

1. अथ विभागानधिकारिणः । तत्र योगीश्वरः । स्त्रीवोऽथ पतितस्तज्जः पशुशर्मत्तको जडः । अन्योऽचिकित्स्यरोगाद्या भर्त्तव्याः सृष्टिर्नरंशकाः ॥ तज्जः पतितजः । स्त्रीवान्धौ यदि जन्मत आरभ्य तदा विभागानानर्हत्वाव । यदि त्वन्तरा तदा तदपगमश्चेदौषधादिना तर्हि दृष्ट्यादा तद्विभागः स्यादायव्ययविशोऽधितादिति रोग्याविभागार्हत्वावेवेति ध्येयम् । आद्यशब्देनाश्रमान्तरगतपिष्टदेश्युपपातकिवधिरमूकनिरिन्द्रियाणां ग्रहणम् । यथाह वशिष्ठः ॥ अनंशास्त्वाश्रमान्तरगता इति । नारदोऽपि । पिष्टद्विट् पतितः घण्टो यस्य स्यादौपपातिकः । चौरसा अपि नैतेऽंशं लभेरन् क्षेत्रजाः कुत इति ॥ मनुरपि । अनंशौ स्त्रीवपतितौ जात्यन्ववधिरौ तथा । उन्मत्तजडमूकाश्च ये च केचिन्निरिन्द्रिया इति ॥ व्याधिना निर्गतमिन्द्रियं यस्य स निरिन्द्रियः । तेन स्त्रीवाद्भेदः । कश्चित्तु निरिन्द्रियाः पाणिपादादिहीना इत्याह ।

2. एते स्त्रीवादयोऽंशभाजो न भवन्ति किन्तु ग्रासाच्छादनदानादिना भर्त्तव्याः पोषणीयाः । अभरणे तु महान् दोषः । यथाह मनुः । सर्वेषामपि चेतेषां दातुन्यायं मनीषिणा । ग्रासाच्छादनमत्यन्तं पतितोऽह्यददद्भवेदिति ॥ अत्यन्तं यावज्जावम् ।

3. तत्रापि पतितोपपातकिनेर्यथावत्पायश्चित्ताचरणमनंशित्वम् । औद्धत्यादिना प्रायश्चित्तमकुर्वतोऽन्तु निपतनमेव ।

4. एतेषाञ्च विभागात्प्रागेव दोषभाक्तेऽनंशित्वम् । न पुनर्विभागोत्तरमपि दत्तविभागपद्धतं प्रमाणाभावात् ।

पश्चादप्यौषधादिना दोषनिर्हरणेऽस्येवांशभागितेति विज्ञानेश्वराचार्याः । युक्तश्चेत्तत् । दोषप्रयुक्तत्वाच्चिभागानर्हतायाः । विभक्त्येषु सुतो जातः सर्वार्थां विभागभागिति न्यायसाम्यात् ।

5. पतितादिषु लिङ्गमविवक्षितमनुपादेयत्वात् । ब्राह्मणो न सुराम्भिवेदित्वादिवत् । तेन यथासम्भवे पत्नी दुहितर इत्यादेरप्ययमपवादः ।

6. स्त्रीवादीनामनंशत्वेऽपि तत्पुत्राणामंशोऽस्तीत्याह योगीश्वरः । चौरसाः क्षेत्रजाश्चेषां निर्दोषा भागहारिणः । निर्दोषाः पूर्वोक्तानंशत्वप्रयोजकदोषशून्याः । तत्र स्त्रीवस्य क्षेत्रजपुत्रः सम्भवत्यन्वेषामौरसोऽपि पुत्रद्वयग्रहणमितरपुत्रबुदासार्थम् ।

7. पतिततत्सुतयोर्न भरवन् । तथा च देवकाः । मृते पितरि न स्त्रीवकुशुम्भत-
जङ्गान्धकाः । पतितः पतितापत्वं किङ्गी दायांशभागिनः ॥ तेषां पतितवर्जैर्भ्योभक्तं
वक्ष्यच्च दीयते । तत्सुताः पिष्टदायांशं जमेरन् दोषवर्जिता इति ॥ किङ्गी प्रव्रजितादिः ।
पतितपदेनात्र पतिवसुतस्यापि यद्वक्ष्यं पतितोत्पन्नत्वेन तस्यापि पतितत्वात् । पतितापत्वं
पतितमेवान्यत्र स्त्रियाः सा हि परगामिनी भवतीति स्मृतेः । मृत इति विभागकाशो-
पपक्षश्च जीवहिभागोऽप्यनर्हत्वात् ।

8. कात्यायनोऽपि । अन्नमोहा सुतश्चैव सगोत्राद्यश्च जायते । प्रव्रज्यावसित-
श्चैव न रिक्त्वन्नेषु चार्हति ॥ हीनस्त्रोपरिचयानन्तरमुत्तमस्त्रोपरिचयने द्वयोरप्यन्नमो-
हात्वन्तयोः । सगोत्रादनियोगोत्पन्नः स्त्रेजजः पुत्रो नार्हति धनम् ।

न च स्त्रीवादेवपनयनाभावेन पतितत्वात् कथं दारसम्बन्ध इति वाच्यम् । उपन-
यनानर्हत्याऽनुपनीतत्वे श्रूयवदपतितत्वात् ।

9. एतेषां स्त्रीवादोनां दुहितरो विवाहपर्यन्तं भर्तृभ्याः संस्कर्त्तव्याश्च । तत्-
स्त्रियस्तु पुत्ररहिताः साध्वगोभरजीया अप्रतिकूलाश्चेत् । अन्यथा वद्विष्करजीयाः ।
तदाह योगीश्वरः । सुताश्चैषां प्रभर्त्तृभ्या यावन्तो भर्तृसाल्लुताः । अपुत्रा योषितश्चैषां
भर्त्तृभ्याः साधुवृत्तयः । निर्वास्या अभिचारिण्यः प्रतिकूलास्तथैव च ॥

10. आपस्तम्बः । अपपात्रितस्य रिक्त्वपिण्डोदकानि निवर्त्तन्ते । अपपात्रितो
भिन्नोदकीकृतः । तथा वृहस्पतिः । सर्वार्थोऽप्यगुणवान्नाहः स्यात् पैटके धने । तत्पि-
ण्डदाः श्रोत्रिया ये तेषां तदभिधीयते । उत्तमार्थाधमर्थेभ्यः पितरन्मायते सुतः । अत-
स्तद्विपरीतेन नास्ति तेन प्रयोजनम् । तथा गवा किं क्रियते या न धेनुर्गर्भिणी ।
कोऽर्थः पुत्रेण जातेन यो न विद्वान् न धार्मिकः । शास्त्रश्रौर्थाथरहितस्तपोदान-
विवर्जितः । आचारहीनः पुत्रस्तु मन्त्रोच्चारसमः स्मृतः ॥

अथमर्थः । पित्रादेरौर्द्धदेहिक्कर्मण्यः कर्त्ता सुतोऽसंस्कृतोऽपि वरः श्रेष्ठः ।
ज्येष्ठो वेदपारगोऽप्यपरो न वर इति ।

पुत्रास्त्रो नरकाद्यस्मात् पितरन्मायते सुतः । तस्मान्पुत्र इति प्रोक्तः स्वयमेव स्वय-
म्भवेति स्मृतेः पुत्रकर्मकर्तुः पिष्टधनस्त्राभ्यमेव वेतनमतस्तदकुर्वन्तः कुतो वेतनाधि-
कार इति भावः ।

मनुरपि । सर्वं एव विकर्मण्या नार्हन्ति भ्रातरौ धनमिति । औतस्मार्त्तकर्म-
नधिकारिणो विकर्म्मसक्ताश्च भागानर्हा इति भावः ।

इति विभागानधिकारिणः ।

CHAPTER IX.

1. अथ विभक्त्यन्तम् । तत्र नारदः । यथैकजाता बहवः पृथग्धर्माः पृथक्-
क्रियाः । पृथक्कर्मगुणोपेता न चेत्कार्थ्येषु संमताः । सभागान् यदि दद्युः को विक्रोधीयुर-
द्यापि वा । कुर्त्युर्थयेष्टं तत्सर्वमीश्वरस्य सधनस्य हीति ॥

अस्यार्थः । एकस्माज्जाता बहवो आतरो यदि विभक्ता इति श्रेव इति केचित् वयन्तु पृथग्धर्मा इत्यादेरेव विभक्ता इत्यर्थः । तद्विधानस्यात्राप्रतीतेरानर्थक्याच्च । पृथग्विभिन्नो धर्मा देवपितृद्विजार्चनरूपो येषां न त्वभिज्ञेन्द्रादिरूपः । तस्य द्रव्यसाध्यत्वेऽप्यविभागोऽपि पृथक्तात् । तथा च बृहस्पतिः । एकपात्रेण वसतां पितृदेवद्विजार्चनम् । एकं भवेद्विभक्तानां तदेव स्याद्गृहे गृहे ॥ एवञ्च प्राङ्निरूपितम् । पृथक्क्रिया लौकिकद्वयादिरूपा येषां पृथग्विभिन्नो ये कर्मणां कायनपेषणादीनां गुणा उपसर्जनभूता सुसंलोकखलदृषदुपलादयस्ते येषाम् । ते चेत्कार्येषु न संमताः परस्परमनुमतिं यद्यपि न कुर्वन्ति । तथापि ते स्वभागान्यदि दद्युर्विक्रोधीयुर्वा । तत्सर्वमन्यदप्याधीकरणादद्यादनादि यथेष्टं खेच्छया कुर्युः ।

विभक्ता यद्यनुमतिं कुर्वन्ति व्यवहारसौकार्यमात्रं भवति । अथ न कुर्वन्ति तथापि न दानाद्यनिष्पत्तिः । तत्र हेतुः हि यस्मात् ते स्वधनस्यासाधारणस्वत्वापन्नस्य धनस्येष्टाः स्वामिनः । साधारणे स्वत्वे हि परस्परानुमत्यपेक्षा न त्वसाधारणेऽपीति भावः ।

२. यत् बृहस्पतिनेक्तम् । विभक्ता वाऽविभक्ता वा सपिण्याः स्थावरे समाः । एको ह्यनीशः सर्वत्र दानाधमनविक्रय इति ॥ तदप्यविभक्तानुमतिं व्यवहारसौकार्यार्थमेव प्रतिपादयति ग्रामाद्यनुमतिवदित्यवश्यं । स्थावरे हि चिरकालस्यापि नियतसाक्षाद्विगमे विभागाविभागनिर्णयो दुःश्रद्धान् स्यात् कालान्तरे । सत्त्वान्वनुमतौ विभागनिर्णयानपेक्ष एव व्यवहारः सिद्ध्यति सर्वानुमत्या दत्तत्वादित्याशय इति विज्ञानेश्वरादयो बहव आहुः । स्मृतिचन्द्रिकाकारस्तु यदि विभक्ता अपि स्थावरविभागं दुष्करं मन्यमानास्तत्फलमेव फलकाले विभज्य भोक्ष्याम इत्यभिसन्धिना तदितरधनमेव पृथग्विभज्य गृहीत्वा स्थावरं मध्यकमेव स्थापयन्ति तादृशस्थावरविवथमिदमित्याह ।

तत्कल्पनामात्रम् । अविभक्तत्वादेव तत्रानुमत्यपेक्षयात् ।

३. स एव । येनांशो यादृशोऽन्यः प्राप्य तन्न विभाजयेदिति । प्राप्य स्वीकृत्य । विभागकाले मत्त्वा यथादिप्रतिपद्यमानो राज्ञा वारणीयोऽन्याग्रहे दण्ड्यश्चेत्याह स एव । खेच्छागतविभागो यः पुनरेव विसम्भेत् । स राज्ञांशे स्वकोऽप्यायः प्राप्तनीयोऽनुबन्धकत् ॥ अनुबन्धो निर्बन्ध आग्रह इति यावत् ।

इति विभक्तज्ञाप्यम् ।

CHAPTER X.

१. अथ विभागप्रकारे उक्ते तत्सन्देहे निर्णयप्रकार उच्यते । तत्र याज्ञवल्क्यः । विभागनिष्ठे च्छातिबन्धुसाक्ष्यमित्येति । विभागभावना श्रेया गृह्येतेष्वैव यौतकैः ॥

विभागस्य निष्ठेऽपलापे विभक्तमध्ये केनचित्कृते छातिभिः पितृबन्धुभिः । बन्धुभिर्मातुणादिभिः साक्षिभिश्चोदासीनैः साक्षिणश्च बलक्षितैः । यद्यपि छातिबन्धवोऽपि साक्षिविधयेव निर्णयकारकं तथापि बहिरङ्गसाक्ष्यपेक्षयान्तरङ्गाले आह्लादिरुपग-

भावरूपविभागलिङ्गतत्त्वज्ञा विभागकर्तारश्चेति गोबलीवर्द्धन्यायेन पृथगुपात्ताः । सेत्वेन विभागपत्रेण च विभागस्य भावना निर्णयो ज्ञातव्यः । तथा यौतकैः पृथक्कृतैः । गुमि-
श्रणामिश्रणयोरिति धात्वनुसारात् । गृहैः क्षेत्रैश्च ।

नारदः । विभागधर्मसन्देहे दायादानां विनिर्णयः । ज्ञातिभिर्भागसेत्वेन पृथ-
क्कार्थप्रवर्तनात् ॥ ज्ञातिग्रहणात् तेषु सत्यु नान्यसाक्षिपुरस्कार इत्येतदर्थम् । कार्यं
कृत्वादि तस्य पृथक्प्रवर्तनात् ।

शङ्कः । गोत्रभागविभागार्थे सन्देहे समुपस्थिते । गोत्रजैश्चाप्यविज्ञाते कुलं
साक्षित्वमर्हति ॥ कुलं बन्धवो मातुलादयः । अतएव नारदेन मुख्यत्वाज्ज्ञातय एव
निर्दिष्टाः । ज्ञातृभिरिति पाठस्त्वनाकरः पुरातनपुस्तकेषु निबन्धेषु चादर्शनात् ।

लिखितन्तु साक्षिभ्योबलवदिति परिभाषायां निरूपितम् ।

2. नारदः । दानग्रहणपञ्चगृहद्वेष्टपरिग्रहाः । विभक्तानां पृथग्ज्ञेयाः
पाकधर्मगमन्यथाः । साक्षित्वं प्रातिभाष्यश्च दानग्रहणमेव च । विभक्ता आतरः कुर्यु-
र्भावविभक्ताः कथञ्चन । येषामेताः क्रिया लोके प्रवर्तन्ते सरिक्थतः । विभक्तानवगच्छे-
युक्तेष्वमप्यन्तरेण तान् ॥ धर्मेवैश्वदेवादि एकपाकेन वसतामिति प्रागुक्तवचनात् ।
आदृशामविभक्तानामेको धर्मः प्रवर्तते । विभागे सति धर्मोऽपि भवेत् तेषां पृथक्
पृथगिति नारदेनैवाकृताश्च ।

दृष्ट्यतिः । साहसं स्थावरं न्यासः प्राग्विभागश्च रिक्थितान् । अनुमानेन
विज्ञेयं न स्याताम्पत्रसाक्षिणौ ॥ न स्यातामित्यत्र यदीत्यध्याहारः । पृथगायव्ययधनाः
कुसीदश्च परस्परम् । वक्षिक्पथश्च ये कुर्युर्विभक्तास्ते न संशयः ॥ आयेययोधनश्च
पृथग्येषामिति विग्रहः । कुसीदं दृष्ट्यर्थं धनप्रयोगः । वक्षिक्पथो वाणिज्यम् । परस्पर-
मिति । एकोऽन्नातोत्तमर्गः परस्वाधमर्गः । एकोऽविक्रोणोते परश्च क्रोणाति । इत्येव-
मादिभिर्लिङ्गैर्विना विभागमनुपपद्यमानैर्विभागः प्रमातव्य इत्यर्थः ।

एताः क्रिया इति बहुवचनान्मिलितानामेवैषां लिङ्गत्वमिति न भमितव्यम् ।
व्यस्तसमस्तानामपि तद्विधानात् । न्यायमूलकत्वाच्च वचनस्य ।

3. अनुमानेनाप्यनिर्णये दिव्ये श्रपथैश्च विधयाल्पत्वभूयस्त्वानुसारेण निर्णयः ।
युक्तिव्यप्यसमर्थासु श्रपथैरेव मर्हयेदिति परिभाषायां निरूपितम् ।

4. यत्र तु मानुषं निर्णायकमिति युक्त्यस्त्वाभासाः । दिव्यश्रपथाध्यवसायश्चा-
न्यतरस्य न भवति । तत्र पुनर्विभागः कार्य इत्याह मनुः । विभागे यत्र सन्देहो दाया-
दानां परस्परम् । पुनर्विभागः कर्तव्यः पृथक्स्थानस्थितैरपीति ॥ स च परिशोधो-
भयव्ययमित्यादि संकटविभागादिरीत्येनसन्धेयम् ।

यच्च मनुनैवाकृतम् । सङ्गदंशो निपतति सङ्गत्कन्या प्रदीयते । सङ्गदाह ददानीति
त्रीत्येतानि सङ्गत्सङ्गदिति ॥ तत् परादृष्टिकारकाभावे । कन्यादानदानान्तरयोरप्येवम् ।

इति विभागसन्देहे निर्णयः ।

समाप्तचेदन्दावभागाणां विवादपदम् ।

VIRAMITRODAYA.

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ERRATA.



Page 11, line 14, *for* property *read* the notion of property.

„ 17, „ 5, *for* the father *read* his father.

„ 19, „ 10, *for* desires *read* the Rāgas.

„ 29, „ 24, *for* deities *read* deities being pleased.

„ 37, „ 1, *for* even it *read* even if it.

„ 107, „ 36, *for* fact *read* determinate thing.

„ 125, „ 22, *for* shares *read* sharers.

„ 126, „ 33, *for* give *read* pay.

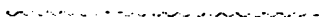
„ „ 34, *for* of performing *read* for performing.

„ 160, „ 22, *for* moreover *read* “ moreover.

„ 165, „ 21, *for* wife *read* wife”.

„ 168, „ 18, *for* with *read* by.

„ 175, „ 13, 14, *for* what is contrary to the nature, meaning as it does of things
read meaning as it does what is contrary to the nature of the
thing.



VÍRAMITRODAYA.

PARTITION OF HERITAGE.

CHAPTER I.

SEC. 1. Introduction.—2. Partition of Heritage defined.—3. Heritage defined.—4. Partition defined.—5. Heritage divided into two classes, obstructed and unobstructed.—6 to 22. Arguments against this division.—23 to 54. These arguments refuted.—55, 56. Jímútaváhana's view in respect of partition and heritage noticed and criticized.—57. Nature of the right of a co-sharer to the joint estate, &c.

1. Partition of Heritage, wherein the learned dispute in various ways about the interpretation of the texts of Manu and other sages, is to be explained by this treatise.

2. Nárada thus declares its definition:—"Where the division by the sons of the paternal property is treated of, that topic of litigation is by the wise called partition of heritage."

"Paternal" signifies what belongs to the parents; for the affix *ya* (in the term *pitrya* rendered into paternal) is added to the term *pitri* which is the result of the uni-residual conjunctive compound (of two words *mátri* and *pitri* equivalent to mother and father respectively). Because the division of the mother's estate also has been in the sequel ordained (by Nárada).

Both the terms "paternal" and "sons" indicate any relation; for in the text,—“The wife and the daughters also, &c.”—partition by other relations also, of the property of the husband and the like, is ordained (by Yájnavalkya).

Accordingly the terms father and the like, are not used by Manu in premising the subject in the following text:—

“ Thus has been declared to you the law of man and wife based upon affection ; listen now to the law of heritage, and to the mode of having offspring on failure of the true son.”

Here again, by the term “ law of heritage,” is intended the partition of heritage ; for that alone is in the sequel explained (by Manu) after the laying down of its definition ; and because, in the introduction also, that only has been set forth as the topic of litigation ; thus,—“ The law of man and wife and *partition*.” Accordingly also, Manu ordains in the sequel, the partition of the estate by any relative.

3. The term “ heritage” again, is said to be constituted of the property to which (one’s) right accrues, solely by reason of (his) relation to the owner. Thus the author of the Nighantu says:—“ The property of the father which is to be divided, the sages call heritage.” Here too the term “ father” stands for any relation, for the term heritage is used to denote also the estate of any other relative. “ Which is to be divided” means what is capable of partition (and not what is to be necessarily divided;) for otherwise the term heritage would not include the estate which devolves on an only son or the like, by reason of the absence of (actual) partition.

As for what is said by Jímútaváhana, namely:—“ The term *dāya* (heritage) by derivation, signifies what is given : hence the use of the term *dāya* and the verb *dā* is in a secondary sense ; inasmuch as there is a similarity (of the secondary with the primary meaning of the term) in the consequence, namely, the accrual of another’s right after the extinction of the right of a person who is dead or gone to retirement or the like. But there is no abdication (as in the case of gift) on the part of the deceased or the like. The term heritage (*dāya*) has a technical meaning, signifying wealth in which one’s right dependent on relation to the former owner arises on the extinction of his ownership.”

That is not good : for if the meaning be admitted to be technical, then the supposition—that the use of the term *dāya* and the verb *dā* is in a secondary sense—is useless ; because the meaning of a word is said to be technical, when there is utter absence of the meaning of its root. Nor can it be said that the meaning here is derivative as well as technical: because the inapplicability of the derivative meaning has been set out by (Jímútaváhana) himself. To assert that the meaning of a term is derivative as well as technical, after assuming a figurative meaning of its root, is useless, involves the fallacy of mutual dependence, is against the order in which meanings are naturally suggested by words, and is a *reductio ad absurdum*. By the insertion of the phrase “ on the extinction of his ownership” in the definition of heritage, it becomes too narrow, because it will be established, that right arises by birth also.

4. The term “ partition”, however, signifies the adjustment into specific portions, of the divers rights which accrued to the entire estate. Hence the term “ partition” is not used in cases of ownership of an only son &c., in the wealth of the father, and the like: “ the heritage has been obtained by such a person” is the expression used (in such cases). Moreover where a single chattel, such as a female slave, or a cow, or the like is common to many co-parceners, then also the meaning of the term partition, namely, the adjustment of rights into specific portions, holds good ; because the right of each (co-sharer) is made known by means of the service (of the slave) or the milking (of the cow) or the like, done at regulated intervals. Accordingly it will be shewn that (in such cases) partition is to be made in the mode declared in the following texts of Vrihaspati :—

“ A single female slave should be employed on labour in the houses (of the several co-sharers) successively according to the shares.... and water of wells or ponds is to be drawn for use according to need....such property (as is regularly not divisible) should be distributed by equitable adjustment, else it would become useless.”

5. The heritage, as described above, is of two sorts, namely, unobstructed and obstructed. As the right of the

sons, &c. to the property of the father and the like, accrues from the very birth, through the relation of sonship, &c., although the (previous) owner, such as the father, is alive,—that is their unobstructed heritage, because the existence of the (previous) owner does not constitute an obstruction. But the property of a deceased person who is destitute of male issue, and who was separated but not re-united, when it devolves on the father, brother, or the like, is called the heritage with obstruction; for their right thereto accrues only on the cessation of the owner's existence which formed the obstruction.

6. But is not heritage in every case obstructed? For it cannot be asserted that the right even of sons, &c. arises by birth alone while the owner is alive.

Because if by birth alone the right of the sons and the like accrued to the property of the father, &c. then the property would be common (as well to the father, &c. as) to the sons and others as soon as they would be born; consequently without their permission the father and the like could have no right to the establishment of the sacred fires, which can be accomplished by means of wealth. But this would be opposed to the following Sruti:—"One who is black-haired and to whom a son has been born shall establish the sacred fires."

7. Moreover the texts declaring the impartibility of what has been, previously to partition, received by favor of the father and the like would become unmeaning. For, if the gift has been made by the father with the consent of the sons, then the gift is made by all; therefore the prohibition (of partition) becomes useless, in consequence of the very absence of the possibility of partition: again, in the absence of the consent (of the sons), no gift of joint property is possible. Hence the texts concerning the affectionate gift and the like, by the father and others would become unreasonable.

8. Similarly, because without the consent of sons, also the affectionate gift by the husband and others to the wife and the like, would be impossible, and in case of

their consent, the gift is made by sons also ; hence in the following text—"What has been given by the affectionate husband to his wife, she may, even when he is dead, consume it or give it away, excepting immoveable property,"—the declaration,—in the passage "consume it or give it away"—of the impartibility of what has been through affection given by the husband, would become meaningless. Nor can it be contended that the text does not intend to establish the affectionate gift in the undivided state, and its impartibility ; but, by construing together "what has been given" with "excepting immoveable property," it establishes that even after partition, immoveable property shall not be given, through affection, by the husband to the wife, and even if given by him through ignorance, shall be resumed and divided by the sons and the like,—but that moveable property when given shall not be resumed is only a superfluous injunction ; and it signifies, as its purport, only the prohibition of gift through affection of immoveable property to the wife. Because such a construction is unreasonable, involving as it does the connection of terms which are apart from each other. If the intention were merely the prohibition of affectionate gift of immoveables, then the other portion would become a superfluous precept which is another term for what is useless.

9. Now the text, namely,—“The father is master of all the gems, pearls and corals ; but neither the father nor the grandfather is so of the whole immoveable property,”—also the following text, viz.,—“By favor of the father, apparels and ornaments are used ; but immoveable property may not be enjoyed even by favor of the father,”—must be admitted to imply the prohibition of affectionate gift of immoveable property, before partition ; for the mention of its prohibition is preceded by the authorization of gifts through affection, of gems, pearls, &c. : otherwise these (texts) would be useless as superfluous precepts. Accordingly as the right of the sons and the like, arises by birth, therefore in the gift, even without their consent, of gems, pearls, and the like, the father is independent ; but in the case of immoveable property, the distinction is, that a gift can be made only with their

consent. This being the plain meaning of the above two texts, right by birth follows.

This is wrong:—for the texts refer to immoveable property inherited from the grandfather. The meaning of the texts is,—that although when the grandfather is deceased, his right being extinguished, the right to his estate is common to the father and the son, still the consent of the son is requisite in the case of immoveable property, but not in the case of gems, pearls, and the like.

10. As for the text of Gautama, namely,—“By birth alone one acquires ownership of property: this the sages declare,”—which is, by the author of the *Mitāksharā*, cited as an authority for holding birth to be a means of proprietary right.

That has been already explained (in a different way) by the author of the *Dāyatattva*, thus,—“Inasmuch as it is through the relation of mere birth—which is the cause of sonship and which is stronger than any other relation,—that the son’s right to the property of the father accrues at the time of the cessation of the father’s right, the son and not any other relative, should take that property; this the sages declare.”—Its meaning, however, is not that even while the father’s right continues, the son’s right accrues thereto; for that would be in conflict with the texts of *Nārada* and *Devala*. Since in the text—“When the father is dead, the sons shall divide the wealth of the father,”—*Nārada* speaks of the father’s wealth, otherwise he would have simply said “shall divide the wealth;” also in the text—“When the father is dead, let the sons divide the father’s wealth; for they have not ownership while the father is alive, and free from defect,”—*Devala* also, after having said “the father’s wealth,” has, by the latter half, viz., “for they have not ownership &c.,” clearly set forth the absence of their right as the reason thereof. “Free from defect” signifies, having no defects, such as, degradation, &c., which extinguish right. *Manu* also clearly declares the absence of the ownership of the sons in his property while the father and the mother are alive, thus:—“After (the demise of) the father and the mother, the sons having

assembled together, shall divide the paternal heritage ; for these are not masters while those are alive."

11. As for what is asserted, namely, Sankha and Likhita say, in the text,—“ The sons shall not divide the heritage while the father is alive ; although ownership is subsequently acquired by them, the sons are certainly incompetent by reason of the absence of independence in respect of wealth and religious duties,”—which has been interpreted by the author of the *Smritichandriká* in the following way :—“ Although ownership” in the property of the father “ is by them,” *i. e.* by the sons “ acquired,” *i. e.*, gained “ subsequently,” *i. e.*, immediately after their birth and not afterwards, still “ while the father is alive” they shall not divide his wealth except at his desire, the sons being incompetent to make partition “ by reason of the absence of independence” *i. e.* by reason of their being dependent on the father “ in respect of property and religious duties ;”—hence from this text it follows that the right of sons, &c. to the property of the father and others accrues by birth.

This too is not tenable ; for, consistently with the various texts of Manu and other sages, which ordain the absence of right (during the lifetime of the father), this text ought to be explained otherwise, and it has been so explained in the *Kalpataru*, thus :—“ Although ownership is subsequently acquired in the wealth gained by the sons through learning &c., without making use of the paternal property ; still by reason of the absence, during the lifetime of the father, of their independence in respect of property and religious duties, there is not (absolute) ownership even in the property so acquired,—then what ownership can there be in the father’s estate ?

12. Moreover the notion of the proprietary right (and of the means of its acquisition) is derived solely from the *Sástras* : but in these birth is not, as inheritance or purchase or the like is, set forth as a means of such right ; therefore right by birth is without authority. Hence is refuted also the argument that as the text,—“ A wife, a son and a slave, these three are incapable of having pro-

perty: whatever they acquire belongs to him whose they are,"—is intended to establish mere dependence, so are the texts declaring the absence of ownership (during the lifetime of the father). Because in the cases of a wife, a son and the like, their ownership (in the wealth acquired by them) by means of spinning, &c. and of tutorship, being established by texts like,—“What has been obtained before the fire, &c,”—the interpretation that the above text refers only to the absence of independence is consistent with reason; for otherwise the competence—of sons and others, mentioned in the Purānas and the other Śāstras, to the performance of religious duties, which can be accomplished by means of property, would also be contradicted. But here on the contrary there being no authority for holding that birth is a cause of proprietary right, it would be merely useless to put on various texts other interpretations (than what they plainly signify).

13. Besides if the notion of the proprietary right were derived from profane authority, then also the notion of the means of its acquisition would be deducible from profane authority; consequently the text of Gautama, namely,—“An owner is by inheritance, purchase, partition, seizure or finding: acceptance is an additional mode for a Brāhmana; conquest for a Kshatriya; gain for a Vaisya and a Sūdra,”—would become unnecessary, for it would embody a superfluous injunction. Indeed useless sacred texts, embodying superfluous precepts, such as,—food is prepared from rice by cooking,—are not declared (by sages).

The meaning of the above text is as follows:—“Inheritance” is heritage; “purchase” is well-known; “partition” is the division of heritage, whereby the right to specific portions is indicated; “seizure” is appropriating grass, water, wood and the like appertaining to common tracts such as forests,—which have not been appropriated by any other; “finding” is obtaining hidden treasure whereof the owner is unknown; a person is owner where these causes of right exist and becomes one, whenever these happen; “for a Brāhmana, acceptance” *i. e.* acquisition in the shape of receiving presents and the like “is an additional,” *i. e.* peculiar “mode,”—for inheri-

tance and the like are common to all (the classes): the terms "additional mode" is to be construed with all (the clauses that follow); "for a Kshatriya, conquest" *i. e.* what is gained through victory in battle as well as through fines and the like, is a peculiar mode; "gain (*nirvesa*) for a Vaisya" is what is acquired as profit from agriculture, tending of cattle, and the like, and "for a Súdra," what is received as wages for serving the twice-born classes: the root *Visa* with the prefix *nir* signifies gain, for in the vocabulary called *Trikánda*, it is laid down that *nirvesa* signifies gain or enjoyment. The terms Vaisya and Súdra being illustrative, the occupations,—such as driving horses, &c. in the case of the Sútás,—of the mixed classes, namely, those that are sprung from a father of a superior class and a mother of an inferior class, as well as those that are descended from a mother of a superior class and a father of an inferior class,—which are laid down in the *Ausanasa* and the like, are included under the term "gain," for all these are in the nature of "gain."

14. Moreover, in the text,—“A Bráhmaṇa, who seeks even by officiating at sacrifices or by becoming a preceptor to obtain any property from the hands of one who takes what is not given to him is the same as a thief,”—the provision of punishment for one who acquires wealth even by means of his own (lawful) profession, such as officiating at sacrifices, “from one who takes what is not given to him” *i. e.* a thief, would be unreasonable, if the notion of proprietary right were derived from profane authority; since the acquisition through one’s own (lawful) profession constitutes no offence.

In my opinion, however, right being derived from divine authority, no right can by virtue of this very text, accrue in the wealth given by a thief for officiating at the sacrifices performed by him, consequently the provision of punishment is very reasonable.

15. Again if the notion of right were derived from profane authority, then such language as ‘my property has been stolen by this person,’—could not be used; for the thief himself would have right therein.

In my opinion such expression is correct, because theft, by reason of the prohibition of it cannot generate right.

16. If, like gold &c., the right too therein were perceivable by the authority of the senses, then it being ascertained, the doubt—whether a certain property is this person's or another's,—could not arise, just as no doubt arises as to what is gold. This is also what the author of the Sangraha has said:—"Whatever is in the hands of a person, he is not necessarily the owner of it. Is not the property of one found in the hands of another (transferred) by theft and the like? Therefore it is from the Sástras alone that the notion of proprietary right springs, and not even from perception. For otherwise it cannot reasonably be said that the property of one has been stolen by another. The means of acquisition are found in the Sástras and are likewise separately described."

"In the Sástras" such as "An owner is by inheritance, &c."; "the means of acquisition of wealth,"—both which are common (to all classes) as well as what are peculiar (to any one class,) "are separately described", and known therefrom. Otherwise if it were deducible from profane authority, the Sástras regarding it would be useless; the rest is clear. "As I have separately described," is the reading (of the above text) in the Smritichandriká; the prior reading is written in the Madanaratna.

17. Nor can it be contended that,—it being well-known to all people that what is capable of being used according to one's pleasure is his property,—the distinctive feature of property is the capability of being dealt with according to pleasure: hence there is not the defect of including (in the definition of property) what is acquired by theft or the like, for in such property there is not the capability of being used by the thief or the like according to pleasure; inasmuch as their fear is observed at the time of dealing with such property: accordingly there being no similarity between the proprietary right and gold, &c. as such, the doubt also (as to the right of any person to a particular property) is consistent.

Because it is impossible; for special rules are laid down by the Sástras, directing the use of property for the purpo-

ses of the support of the family and the like ; and it is nowhere found that property consists in what can be dealt with according to pleasure. This too has been said by the author of the Sangraha after setting forth the opposite view, thus,—“ Nor is that called property, which can be dealt with according to pleasure ; the application of all this, is inculcated by the Sástras alone.” Here in the first half the adverse opinion is set forth ; and in the latter half, the same is refuted.

18. Nor can it be said that inasmuch as, *utpatti* also, which is another name for birth, is like inheritance, &c., set forth as a means of proprietary right, in the text of Gautama, namely, “ By birth alone, &c.” ; therefore although property and the means of its acquisition be deducible from the Sástras alone, still the right by birth of the sons and the like, to the property of the father and the like, is unaffected.

Because it has been already stated that the above (meaning) being open to many exceptions, a different interpretation is to be put upon the text. With this very intention, Dháresvara also has come to the conclusion, that the right of property is exclusively known from the Sástras alone.

19. Again, if right by birth of the sons and the like accrued even when the father and the like are alive, then partition would, at the desire of the sons and the like, take place even against the will of the father and the like. It cannot be contended that it would not take place by reason of the texts declaring absence of independence (of the sons during the father's lifetime). For in that case, (notwithstanding the texts declaring dependence), there would be a mere breach of the rules of morality and religion, but an action at law (for partition) would certainly lie. Just as on the occasion of explaining the text, namely,—“ But when there is a mutual dispute between the preceptor and the disciple, the father and the son, the husband and the wife, or the master and the servant, no action lies,”—it has been previously shewn at length that the meaning of the text is, that if an action consisting of the four elements (*vis.*, the plaint, the written statement, the rejoinder, and

the determination of the matter contained therein) be instituted by the sons and the like against the father and the like, then there would be only injury to their welfare in this world and the next: the same would also be the case here. Nor can it be said, be it so; for that would be contrary to all the commentaries.

20. As to the passage in the ancient books, namely, "Sometimes by birth alone,"—that also is to be explained to mean the mediate cause; because the relation of the father and the son is based upon birth, and because the demise of the father is the cause of the extinction of his right.

21. Besides, according to the contention, that the right of the sons accrues by birth, as the ownership of the sons also arises (in the property of the father) while the father is alive, and consequently partition might take place against his will,—therefore the text of Manu, namely, "After the demise of the father, &c." must be explained (consistently with the contention) to prohibit previous partition by declaring that it takes place by their desire after his demise. But this again would be unreasonable; for it would be liable to the objection of intending a meaning not its own. Nor is it reasonable to suppose that the object of the above text is to enjoin the time for partition to be on the demise of the father and to enjoin partition. For both the injunctions would be unreasonable, inasmuch as the purposes of partition are (only) secular (and no spiritual good is derived therefrom so as to require any injunction, the natural inducement of man to effect it being sufficient). Neither can it be an obligatory injunction regarding partition (*viz.*, that it must be effected). For the making of partition is declared by Manu to be optional;—thus he says: "Either let them live together, or let them dwell apart for the sake of religious merit." If it be considered as a restrictive injunction as to the time (for partition), then partition must be made (if made at all) immediately after the death of the father and not afterwards, (for otherwise) there would be a contradiction of the rule, *viz.*, the effect is the immediate sequence

of the cause. For there is not in this instance, as there is in that of the sacrifice on the birth of a child, an objection analogous to the hazard of the newborn infant's life (that it may be postponed).

22. Hence the texts of Manu and the other sages must be taken, as shewing that sons have no ownership in the property of the living parents, but in the estates of both when deceased. But partition, which may by reason of the ownership (accruing on their death) take place at that time, if desired, is (only) noticed (and is not enjoined, for that is not necessary to be enjoined, which men do of their own accord). Accordingly also by reason of the conflict with these texts, it cannot be asserted that right accrues by birth. It will be hereafter stated that degradation, &c. also cause, as death does, the extinction of the right of the father and the like.

Hence it is only on the extinction of the right of the father and the like, that the right of the sons and the like accrues to their property, but not while their right subsists. Consequently as the existence of the owner and the like constitutes the obstruction in all cases, therefore heritage is in all cases obstructed and never otherwise. Accordingly the division (of heritage) into two classes is unreasonable.

23. To (all) this we say. If it be only on the extinction of the right of the father and others, that the right of the sons &c. accrues to their property, in that case it would follow that while the father and others are alive and free from defect, the sons would be incompetent to perform the ceremonies enjoined by the Vedas,—which can be performed by (one's own) wealth, and consequently there would be the same (§ 6) conflict with the following Sruti, namely,—“One who is black-haired and to whom a son has been born shall establish the sacred fires.” Nor, is the restriction (of the application) of the Sruti reasonable, for the purpose of conformity with a meaning of the Smritis which is evolved out of one's inner consciousness. Because the Sruti is, without distinction, applicable to sons &c., even while the father and the like who have

established the sacred fires, and who have performed the first sacrifice, are alive; and because performance of what is enjoined by the above Sruti, by all the learned persons who perform sacrifices,—is observed; and because in the gloss and the commentary &c. on the subject of conflicts, it has been concluded that the two terms “black-haired” and “to whom a son has been born” are intended to forbid the skipping over the seniors in age, but they are not to be taken in their literal sense which is indefinite. Nor can it be said that as in our opinion, the father’s competence to the performance of sacrifices arises by permission of the sons, so in your opinion the competence of sons &c. would arise by permission of the father and the like. For, in the opinion of both, the father’s right exists in the property, hence the accomplishment of what is of the essence (of sacrifices), namely, the relinquishment of property, is unobstructed; but, according to your opinion, how can the performance of what is of the essence of sacrifices &c. take place, inasmuch as the sons have no right at all (during the lifetime of the father), nor is proprietary right generated by permission? But in fact, however, the permission of the sons is not even required, the father being independent; but sons and the like are, on account of their dependence, under the need of permission of the father and the like; this much is the distinction,—in the same way, as women in performing religious and charitable acts by means of their own wealth are to take the permission of their husband by reason of the declaration of their dependence. But if the permission be not taken, then the independent conduct gives rise to sin or imperfection in the act, but what is of the essence of such acts is not (on that account) invalid. And the supposition, if made for the above reasons, that right is generated by permission of the father and the like, is supported by neither sacred nor profane authority. Therefore even if proprietary right be held to be deducible from the Sástras alone, then anyhow the inclusion of birth also by the term “finding” (*adhigama*) in the text,—“An owner is by inheritance, &c.”—is necessary, for the sake of the right of the sons and the like to the performance of sacrifices, &c. even when the father and the like are alive and free from

defect,—(the right) which rests on the authority of the Sruti, the Smriti, the Purānas and the custom observed by the learned. It will be shewn that in fact, however, the notion proprietary right is derived from profane authority alone; and the ownership of the sons &c. in the estate of the father and the like (during their lifetime) is recognised by people (without the assistance of the Śāstras): and (ownership itself,) by others (who have nothing whatever to do with your Śāstras).

24. As also for what has been said (§ 6), namely, that if the right be common as well to the father or the like as to the sons &c. who are incapable of signifying permission, how can the ceremonies of establishing the sacred fires and the like, take place in the absence of their permission? That has already been almost refuted, thus—that the father, by reason of his independence, does not stand in need of the permission of sons &c. even when they are capable of giving permission; therefore *a fortiori* when they are incapable of giving permission. But Professor Vijnānesvara says—that the competence (of performing sacrifices at the expense of the joint property) follows by force of the very injunction for the performance of them.

25. Hence also the interpretation (§ 10) which is put by Jīmútavāhana and Raghunandana upon the text of Gautama,—“By birth alone one acquires ownership of property,”—namely, that birth is intended to be the mediate cause of right,—is useless.

26. As for the text of Sankha, the interpretation (§ 11) given in the Smritichandrikā is preferable: but if the interpretation were as put in the Kalpataru, then the terms like “acquired by learning” &c. being imported, (the defect of) the importation of many terms not occurring in the text would take place. The importation, however, of the term “birth” (in the interpretation given in the Smritichandrikā) is not unreasonable, because it presents itself through the suggestion of the terms sons &c., and because the importation is of fewer terms.

27. Hence in conformity with the texts (§ 9) of the Smriti which are supported by the Sruti, it is more proper to

interpret that the texts (§ 10) of Manu, Nārada and Devala refer to the absence of independence (of sons &c. during the lifetime of the father and not to the absence of their right).

28. As also for what has been said (§ 7), namely, that on the hypothesis of right accruing by birth, the texts declaring the impartibility of what has been gifted through affection would become unreasonable; that too is not tenable, for they may be reconciled as having reference to (the sons') permission, and as having the object of establishing the invalidity of the affectionate gift of immoveable property: or, what is declared (in those texts) is the impartibility, by reason of the father's independence, of what, other than immoveable property, has been given by him even without the permission of the sons.

29. Accordingly with regard to immoveable property, there is the following special rule, namely,—“Immoveables and bipeds although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons.” And the text, namely,—“The father is master of all the gems, &c.” is, however, more reasonable on the hypothesis that right accrues by birth. Nor is it right to say that it refers only to immoveable property acquired by the grandfather, for both are enumerated in the text, “neither the father nor the grandfather.” The declaration that what is even acquired by the grandfather himself is not to be given away when there is a son or even a grandson, indicates right by birth. As in the opinion of the adversary, the father alone has the right to the gems, pearls and corals of the grandfather, by reason of it being so declared; so, in this opinion also, notwithstanding the son and the like have a right thereto by birth, co-existing (with that of the father,) the father has the competency of making gifts: thus there is no difference.

30. Hence it is to be observed, that although the right of the sons &c. to the property of the father and the grandfather accrues by birth alone, still for the performance of the necessary religious ceremonies and for the purpose of affectionate gift, maintenance of the family, deliverance

from danger and the like that are prescribed by the sacred texts, the father possesses independence in dealing with the (joint) property other than immoveable: but with respect to immoveable property, whether self-acquired or inherited from the father or other ancestor, the dependence on the sons &c. is alike, by reason of the following text:—
 “Although immoveables and bipeds be acquired by a man himself, there can neither be a sale nor a gift (of them) without convening all the sons. Those that have been born, as also those that are unborn, as well as those that are in the womb, all of them require maintenance: neither a gift nor a sale” (can take place).—To this (rule) again, there is an exception which will be mentioned.

31. As for what has been said, (§ 12) namely, that inasmuch as the notion of proprietary right is derived solely from the Śāstras, and as the generation by birth of such right is nowhere declared in the sacred texts, how can it be admitted that the right of the sons &c. to the property of the father and the like, arises by birth? That, however, has been already refuted (§ 23), even granting that the idea of right is derived solely from the Śāstras; since in the text of Gautama and others, birth also is declared as a means of right.

32. But, in fact however the proposition that the notion of right is derived solely from the Śāstras, does not stand the test of reason. Amongst the Mlechchhas and the like also residing in their own country, who are devoid of even the slightest knowledge of the Śāstras, the expression that “this much is so-and-so’s *property*” and transactions, such as sale and purchase based thereupon are found. Therefore it must be admitted that property—which is determined by proprietorship—whereof purchase and the like are the means of acquisition is, by means of co-existence and absence of separate existence, known by them (the Mlechchhas) solely through the (profane) authority of the senses and the like, either as consisting in the capability of being dealt with according to pleasure, or as a substance of a distinct category of its own.

33. An enthymeme too based upon this reason has been mentioned by Vijnānayogin, thus:—“Property is

known from profane authority, for it effects transactions relative to profane purposes, like rice, &c.;" the instance shows co-existence: "the sacrificial fire and the like, that are known from sacred authority, do not give effect to transactions relative to profane purposes;" this is an instance shewing absence of separate existence. Hence the reason consists in co-existence and absence of separate existence. "Although sacrificial fire and the like effect also transactions relative to secular purposes, such as, the boiling of food; still they do so, in the character of fire &c., as known from profane authority. but not in the character of sacred fire &c." thus there is no infraction of the rule. "But here, purchase and the like are effected by means of gold &c. not as such but (by gold) as property only." Just as when gold &c. become the cause of secular works, such as, ornaments, that is the secular phase (of gold &c.), similarly property also which exists in all (in gold as well as in other things) is only secular. "Since in this world transactions such as purchase are not effected by what is not property."

34. Nor can it be said that in this view, an objection would arise, namely, that the texts of law such as,—“An owner is by inheritance &c.,”—would be useless as superfluous precepts, affirming, as they do, what is otherwise established by profane authority. For the above texts may reasonably be explained as referring to what conduces to spiritual good or to spiritual evil, like the consideration, in the Smṛiti of grammar, of the correctness and incorrectness (of words) consisting (respectively) in the expression of immemorial meaning or its absence.

Thus on the subject of correct expression, (in the Mīmāṃsā) it has been concluded,—“That the Śāstras treat of the correctness which is known from profane authority alone, but which is not discriminated by the people who use correct as well as incorrect words; but not of the correctness which is not deducible from profane authority: for (were it so, then) in the injunction,—‘shall speak with correct words’ &c. there would be the fallacy of mutual dependence &c.” Similarly also is the case here.

35. Accordingly in the Nayaviveka, Bhavanāth says:—“The means of acquisition such as birth &c. are

derived from the profane authority ; for what are discriminated to be the impressions on the mind of the primeval men, are unimpeachable, and the Smṛiti has for its object the consolidation of them, like the Smṛiti of grammar and the like." By the term "&c." in the phrase "birth &c." are included purchase and the like ; and by the term "and the like" in the phrase "grammar and the like" are included, music, examination of precious jewels, palmistry &c. It has been said by the venerable Professor while treating of the subject of Smṛiti, that desires and the like also which are undoubtedly deducible from profane authority are defined (in the sacred books) for the sole purpose of discriminating them for the benefit of the unthinking.

36. The text, namely, "An owner is by inheritance &c." has already been explained (§ 13). Professor Vijnānesvara, in the *Mitāksharā*, has made the following comments :—"The term 'inheritance' refers to unobstructed heritage ; and the term 'partition' refers to obstructed heritage."

The author of the *Smṛitichandrikā*, however, has, after commenting that the term 'inheritance' signifies birth alone which causes ownership of the sons &c. in the property of the father, and the like, explained the term partition to mean the distribution engendering ownership limited to a definite portion of the wealth of the father and the like. But this is not right. For partition is made of that in which proprietary right has already arisen, consequently partition cannot properly be set forth as a means of proprietary right. Indeed what is effected by partition is only the adjustment (of the proprietary right) into specific portions. If the enumeration be taken to comprise the principal as well as the secondary causes, then there would be variableness in the meaning of the term 'owner.' Accordingly in the *Mitāksharā*, Professor Vijnānesvara says, that "the term partition is generally understood to relate to property belonging to several owners, and does not relate to what appertains to another nor to what is unowned ;" and that "the right of the sons and the like, by birth alone is most familiar in the world."

37. As also for the text,—(relating to succession), namely,—"The wife and the daughters &c." ; that again is

intended to prevent mistakes with regard to the proprietary right—notwithstanding it is derived from profane authority—when there are many persons who are recognized as heirs by reason of their relationship to the (late) owner. For it is held by all the commentators that the sacred Institutes on positive law mainly consist of superfluous precepts embodying matters derived from profane authority.

38. That property whereof the means of acquisition are prescribed, is deduced from profane authority alone—is approved also by the venerable Guru. For while setting forth the third interpretation which the Aphorism on the desire of acquisition admits of, he in the following passage, doubts the possibility of the adverse argument, namely,—If restrictions relative to the acquisition of property referred to sacrifices, then there could be no property at all, since proprietary right is not derived from profane authority ;—and then shows that the proper adverse argument is—That acceptance and the other modes of acquisition of property are the means of proprietary right, is a fact derived solely from profane authority :—“ Nor does (the text relating to) the means of acquiring property concern sacrifices, for (if it did so), there could be no property at all, consequently sacrifice itself could not be performed. This has been irrationally asserted by some one. To say that acquisition does not produce proprietary right, is a contradiction in terms.”

The meaning of this passage has been expounded by the commentator in the following way :—“ If the restrictions regarding the acquisition of property (laid down in the texts such as,—‘ An owner is by inheritance &c.’) related to sacrifices, (so that they could be performed only by property acquired agreeably to those restrictions), then this text could not signify that the restrictions relate to the means of acquisition of property ; for by signifying that the restrictions relate to sacrifices, its power of signification becomes exhausted. That being so, there would be no authority to show that what is gained by acceptance (of presents), and the like, becomes property, consequently sacrifices consisting in the relinquishment of property, could

not be performed by that (*i. e.* any thing so acquired) which is not property; therefore, to what does relate the text embodying the rules regarding the acquisition of property? (*i. e.* does the text ordain that nothing but what is acquired in the modes mentioned, becomes property or that sacrifices can be performed by no other property than what is so acquired?) This is the adverse argument, the possibility of which is doubted: and the above is the meaning of the doubt. The passage beginning with 'This has been irrationally asserted &c.' constitutes the answer to it; its meaning is as follows: inasmuch as it is established by profane authority, that acceptance and the like, are the means of proprietary right, that cannot be a subject of the sacred books; consequently the text signifies only that the rules have reference to sacrifices: consequently neither is there the impossibility of performing sacrifices, nor are the restrictions useless."

Also in stating the conclusion, the venerable Guru does, upon the very assumption that the notion of property is derived from profane authority, explain the purpose of the disquisition thus,—“Hence a breach of the rules affects the person, not the sacrifice.” The meaning of this passage also has been thus explained:—“If restrictions respecting the acquisition of property related to sacrifices, then a sacrifice might be performed with such property only as was acquired consistently with the restrictions, and not with property acquired by violating the restrictions; but the fault arising from the violation of the restrictions would not attach to the person (who performs the sacrifice). This is agreeably to the adverse argument. But what is affirmed in the conclusion is, that inasmuch as the restrictions regarding the acquisition of property do not relate to sacrifices, but affect the person, the performance of a sacrifice is not imperfect even with property acquired by infringing the restrictions: therefore the fault of violating the restrictions attaches to the person only.” It is here admitted that even what is acquired by infringing the restrictions, becomes property; because otherwise the statement that sacrifices may be performed thereby would be contradicted.

39. While treating of the very same subject, the venerable Kumárilasvāmin also is of the opinion that the notion of property is derived from profane authority. And this is easily accessible to those who feel curiosity for the valuable exposition of the subject (given by that venerable author).

40. Accordingly in the Śāstradīpika, Pārthasārathi says:—"Acquisition which takes place out of (man's) desire (for property) is not derived from the Śāstras." It takes place from (human) desire as one of the ends of man, for property which when acquired delights the man, is from perception, known as one of the ends of man, it cannot from any inference, be deemed as having for its sole object the performance of sacrifices. Therefore it is to be remarked, that property which is one of the ends of man, is used for the performance of sacrifices, in the same way as for any other transactions, for a sacrifice also is one of the transactions of man: but property is not subservient to sacrifices only, because, if that were so, no sacrifice could take place inasmuch as life (of man) would be extinguished (for want of property to sustain it, consequently who is to perform sacrifices?) This (explanation) is given by Praghattaka. Here by refuting that acquisition is deduced from the Śāstras, it is very clearly indicated that the notion of property and the means of its acquisition is derived from profane authority. It is further stated by him:—"Hence acquisition of property,—which is one of the ends of man,—thus becomes one of which the object is temporal. But the restrictions (relative to acquisition of property), having no temporal object, must have some spiritual object. The spirituality again of the restrictions, referring as they do to acquisition—which is an end of man,—must be taken to affect the man alone; hence it is indicated that a person acquiring (property) in any other mode (than what are prescribed by the Śāstras) commits sin."

41. Hence also, it cannot be apprehended that the texts like "An owner is by inheritance &c.," are unnecessary; since, by declaring as superfluous precepts, that inheritance and the like are the causes of proprietary

right,—a fact deducible from profane authority they intend to lay down restrictive rules with a view to prohibit any other means of property than those (declared in the texts): like the restrictions relative to the direction of the posture of taking food which produces satisfaction of the appetite. The difference in the opinions of Bhatta and Guru consists in this only: (the one says) that the acquisition of property alone forms the instance in the disquisition of what affects sacrifices and of what affects the person (performing sacrifices); but the restriction is set forth as the argument of the adversary: (while the other says) that the restriction alone forms the instance there. But both of them concur in holding that property is derived from profane authority. This is the substance (of what they say). The arguments for and against their respective opinions are dwelt upon in the works of the learned on the subject, but are not set forth here as they do not bear upon the point in question.

42. Hence is refuted also the argument of Dhāresvara and the author of the Sangraha, namely, that if the notion of property were derived from profane authority, then what is obtained by means of theft and the like would become property. For in the world, theft and the like are not recognized to be the means of proprietary right, inasmuch as such expression is used (in cases of theft &c.) as that “this property belongs to another and not to this person.” Again a doubt relating to proprietary right in the form,—‘Whether this property belongs to this person or to another’—(a doubt) which arises from a doubt regarding the (person’s) means of acquiring the property, such as purchase—is not unreasonable. Hence also the argument, that if the notion of proprietary right were derived from profane authority, then no one could say “that my property has been stolen by him,” for the property (which is the subject of theft) would belong to the thief alone,—entirely falls to the ground.

43. As for what has been said by the author of the Sangraha (§ 17), namely that, since the application of property is laid down by the Śāstras, therefore it cannot possibly

be said that property consists in the capability of being dealt with according to pleasure ; because the use to any purpose according to one's pleasure is impossible. This too is only plausible. For we say, not that it is what is used according to pleasure, but that it is what is *capable* of being so used. (Were it) otherwise, (then) when the will (to use property in a particular way) is restrained for fear of the King and others, it would cease to be property ; moreover this anomaly would result, namely, that the same thing would be one's property when he desires to use it, and cease to be so while he feels no such desire. It may be that sometimes property is not dealt with according to pleasure, by reason of rules (regarding the use of property) laid down by the Sástras, as by reason of the restraint put by the King and others, but still the capability of being dealt with according to pleasure remains unaffected. Hence even if property be used by a person of perverse character in a way contrary to the Sástras, still it would not be a case of dealing with what is not property : but only sin would be incurred for violating the rules prescribed by the Sástras. For there is certainly the capability of being so dealt with arising from its being acquired (by him.) Accordingly it has been said also in the *Nayaviveka*, that " what is acquired by one is capable of it by him." " Capable of it" signifies, capable of being dealt with according to pleasure. (It is) similar to the capability in a seed of producing sprout,—resulting from the seed as such, although it does not produce a sprout owing to any obstacle. But in reality there is indeed a difference between the distinctive feature of property and the capability of being dealt with according to pleasure, in the same way as between the distinctive feature of seed and the capability of producing germ ; otherwise so long as the *differentia* of the capability is unknown, the capability (itself) will remain indeterminate. Hence like the caste of Bráhmanas, property is certainly a substance of a distinct category of its own, which is liable to production and destruction, and is manifested by the cognizance of its means. The only distinction is that the caste of Bráhmanas being a class is eternal. This is explained in the treatise on the subject and in the *Lilávati* and other works.

44. The object of the disquisition here, namely, whether the notion of proprietary right is derived from profane authority or from sacred authority has been explained in the *Mitákshará*, thus:—"If the notion of property were deduced from sacred authority alone, then by reason of the text of Manu, namely,—'If Bráhmanas acquire wealth by means of a blameable act, they become purified by the relinquishment of that wealth, with prayer and rigid austerity,'—a person having no right to the property acquired by means of improper acceptance of presents, or by other means which are prohibited to that person,—in the same way as to what is acquired by theft and the like, such property would not be partible even among his sons. But if the notion of property be derived from profane authority, then the father's right accrued to what was so acquired; consequently that being paternal property, may be divided by his sons. The acquirer alone is liable to perform expiation for the sin incurred in consequence of the violation of the prohibition: but his sons, who acquire that property by means of inheritance, which is not unlawful, are not required even to perform the expiation. Since Manu says:—'There are seven lawful means of the acquisition of property, namely, inheritance, finding, purchase, conquest, investment, performance of (religious) acts (for others,) and acceptance of presents from proper persons.'—'Investment,' is the laying out of property for the purpose of profit; 'performance of acts,' means, officiating as a priest; of these the three beginning with inheritance are lawful to the four classes alike; but conquest is so, to the Kshatriya; and investment when made in person, to the Vaisya and the Súdra; but when not carried on personally, or even if carried on personally in times of distress, to all the classes; but the performance of religious acts (on behalf of others) is peculiar to the Bráhmanas alone: this is the distinction."

45. To this, the author of the *Madanaratna* raises the following objection:—Even if the notion of property be taken to be derived from sacred authority alone, still the prohibition of the acceptance of presents from improper persons and of the other reprobated means, intends not that they do

not produce the proprietary right, but that they engender merely sins. Because by the following texts, namely,—“A Bráhmaṇa taking food or accepting presents from any person, when in distress, is not tainted with sin, for he is equal to the burning sun; a twice-born is not stained with sin, if he carries on, but not personally, money-lending, agriculture, or trade, or does it personally at a time of distress,”—it is declared that he “is not stained with sin.” Hence it appears that no sin is incurred at a time of distress, consequently it is clear that sin is incurred in the absence of distress; for it is proper that the prohibition and the exception to it should refer to the same subject. Accordingly when there is no distress, expiation consisting of prayer and rigid austerity after the abandonment of the property,—only has been ordained. But with regard to the acceptance of presents from improper persons, and other reprobated means of acquisition, there is no text whatever providing punishment, similar to that in cases of theft and the like. Hence agreeably to both, the adverse opinion and the conclusion, there being no difference as to the generation, by the acceptance of presents from improper persons and other reprobated means, of the proprietary right of the person acquiring by such means, the partibility too amongst the sons and the like, of what has been so acquired is alike (in both opinions). Therefore what has been said to be the object of this disquisition is not reasonable.

46. What we say here is this. As in the opinion of those who assert that the notion of property is derived from sacred authority alone, the prohibition of theft and the like implies the non-generation of proprietary right, the infliction of punishment and the liability to penance, similarly let the prohibition also of the acceptance of presents from improper persons and of the like imply the same. Again, in the event of distress, as by virtue of the exception laid down in the following text,—viz. “Thus likewise may a person who has not eaten at the time of six meals (i. e. has fasted for three days together,) steal at the time of the seventh meal, from a man of mean conduct, (so much as is sufficient for that day only) without intending

to provide for the morrow: and if the owner asks, it should be confessed to him when he asks,"—there is none of those three incidents in theft, let the same be the case in the acceptance of presents from improper persons, and in the like. For otherwise, in both the instances, the five great sacrifices and the like could not be performed by such property. It may be objected that upon the assumption that the notion of property is derived from the Sástras, how can the prohibition of theft which is not recognized (by the Sástras) as a means of property,—be justified? Hence it must be admitted that there is an indirect recognition of it by reason of its inclusion under "seizure." For otherwise the prohibition itself would be unreasonable. Also for fear of the objection that in the case of the prohibition of what has been enjoined by the Sástras, obedience would be optional, as in the instance, "The initiated are not to perform the *homam*," it must *ex necessitate* be acknowledged either according to the opinion of the author of the Bháshya, that the injunction refers to cases other than what are prohibited, or according to the other opinion, that agreeably to the rule governing general and particular provisions the prohibition which is particular supersedes the general injunction (in the cases to which the prohibition refers). But the acceptance of presents &c., as means of acquisition for Bráhmaṇas &c., have been declared (by the Sástras); hence in the event of distress and in its absence, the exception (to the prohibition) and the prohibition respectively are very reasonable. If it be objected that, in that case a Bráhmaṇa would by accepting presents from improper persons and by personally carrying on trade and the like, otherwise than in the emergency of distress, be liable to judicial punishment. (The answer is) be it so; for it is not held by any one, that there is no judicial punishment for one who renounces the duties of his class. The punishment again which is to be inflicted in particular cases, is what is generally provided, while in some other cases it is specifically laid down: but this is a different question altogether. Hence there is also another defect in the opinion of those who maintain that the notion of property is derived from sacred authority, namely *multiplicity*, inasmuch as the prohibition of theft (according to

them) implies three things (namely, the non-generation of property, the infliction of punishment and the liability to penance); as well as the *multiplicity* consisting in the admission of the limitation of a general proposition. But in the opinion of those who assert that the notion of property is derived from profane authority, the prohibition implies punishment and sin only; because it is a matter derived from profane authority that theft and the like are not the means of property: and as the prohibition refers to what may happen under the influence of the springs of human action, there is no defect in the shape of the admission of the limitation of a general proposition. Hence (in this opinion) there is *fewness* (of assumptions as opposed to *multiplicity* in the other opinion). Therefore if the notion of property were held to be derived from sacred authority alone, then acceptance of presents from improper persons, and the like being not (lawful) means of property the father could have no right to what is so acquired; consequently as there can be no partition of the property acquired by the father by means of theft and the like, so also what has been acquired by means of acceptance of presents from improper persons would be impartible. But if the notion of property is derived from profane authority, then as these also are in the world considered to be legitimate means of acquisition, therefore it is established that what is so acquired is partible. Hence the object (of the disquisition) as set forth in the *Mitāksharā* is perfectly consistent with reason. The object (as set forth in the *Mitāksharā*,) however, is illustrative; for agreeably to the adverse opinion, the sons &c., would have been liable to punishment and penance even in taking paternal property acquired by improper acceptance &c., just as in taking what has been acquired by the father by means of theft and the like. (To obviate) this too is to be properly considered as an object (of the disquisition) by reason of what has been said (in the *Mitāksharā*), namely "The acquirer alone is to perform the penance."

47. But this question ought to be solved here,—namely, if the notion of property is derived from profane authority, and it is a matter established by profane authority,

that theft is not a means of property, then, when theft is allowed in the emergency of fasting for three days together, whether or not property arises in what is stolen accordingly. The first (alternative) is not tenable; for it being established by profane authority that theft is not a means of property, the generation of property by theft cannot be maintained. Indeed a fact against the authority of the senses, such as the generation of acid curd by water, cannot be established by a thousand texts. Neither is the second tenable; for the five great sacrifices which are principally considered cannot be performed by what is not property. Nor can it be said that let that stolen property accomplish only the gratification of the appetite and not any religious rite; because that would be contrary to the practice of the learned, and because it is ordained that,—"The learned never partakes of it without performing the five great sacrifices: the very same food which a person partakes in this world, is offered to his gods." Accordingly the following anecdote is related in the Purānas:—"When Visvāmitra having stolen a hind leg of a dog from the house of a butcher, and having made up his mind to partake of the same, and to offer a portion of it to Indra and the other gods, was about to present to the gods their share, then Indra and the other deities created rain, and abundant crops instantly sprung up." But if property be held to be a matter derived from the Śāstras, then the generation or the non-generation of property by theft and the like,—as is laid down by the Śāstras, are not contradictory. While those who maintain that the notion of property and the means of its acquisition are derived from profane authority, are fixed on the horns of a dilemma.

48. The above argument we meet thus: Although it is not deduced from profane authority, that theft is a means of right, still it is derived from the very text cited above, which authorizes theft at the time of the seventh meal, by one who has not taken food during the time of six meals. But the position that the notion of property is solely derived from the Śāstras is untenable, inasmuch as purchase and the like transactions that can be accomplished by property would be unaccounted for among those who are

ignorant of the Śāstras. Hence the prohibition of theft indicates punishment and sin only ; but it does not imply non-generation of right, since generation of right by theft is not recognized. As for instance although the class Bráhmānyam is perceptible in all (the individuals constituting the class) still in so far as regards the superiority of the caste, it is deduced from the Śāstras alone ; because the rules regarding the superiority and inferiority of men are derived solely from the Śāstras. Thus the venerable preceptor says—"But here this much only is to be admitted as derived from the sacred authority, since this rule regarding the superiority and inferiority of men is not deducible from profane authority." He further says :—"Then again, the class Bráhmānyam is manifested in an individual descended lineally from a particular person ; hence what is derived from the Śāstras is only the relation between that which is manifested and that whereby it is manifested, (*i. e.* between the class Bráhmānyam and the descent from a particular person) : and the class Bráhmānyam in an individual described above, is certainly perceptible to a person who is conscious of that whereby it is manifested ; inasmuch as there are all the conditions for the perception of the class after the perception of the individual." In the present case, however, unconditional theft alone being considered to be not a cause of property, only the generation of property by theft under the circumstances mentioned is taught by the Śāstras. Nor can it be said that it is against the authority of the senses, and what is against the authority of the senses cannot be taught by a thousand texts. Because the non-generation too (by theft, of proprietary right) is not a matter derived from perception : but inasmuch as what is a means of property is deduced from the co-existence and the absence of separate existence, of that means and of the free use of property acquired thereby,—the fact that theft is a means of property is not deduced, since stolen property (as such) cannot be applied to any use. Just as the production of a son by means of the sacrifice for a son,—a fact which is beyond profane authority, is taught by the Śāstras, notwithstanding there are visible means for the generation of a son ; let the same be the case here also.

As for the sacrifices aiming at heavenly happiness, which are purely spiritual in their consequences, there is in addition the absence of visible means: but that is a different question. As (for another instance) the fact that the reviving *mantras* have the power of producing the burning property (of fire) which has been counteracted by any neutralizing agent is known from the *Sástras* such as the *Arthavan*, since it is not deducible from profane authority. Because it cannot be asserted that the reviving power is anything more than the causality of an effect counteracted by a neutralizing agent; since (if the power be held to be a separate substance, then) there would be great multiplicity in supposing the destruction of the power and the production of it.

49. As for what *Jímútaváhana* has, while refuting the position that right accrues by birth, said,—after explaining that the intention of the ancient passage, viz., “Sometimes by birth,” is to indicate the mediate cause, since birth is the cause of the relation of the father and son and the demise of the father is the cause of the (son’s) right;—and anticipating the objection, viz., how can the son’s right arise by the father’s act consisting in the generation?—namely;—“The production of the right of one person even by the act of another is not inconsistent, it being based upon the authority of the *Sástras*; and that is also seen in the world, since in the case of donation, the donee’s right to the thing arises from the act of the donor, namely from his relinquishment in favor of a sentient being. Neither is the right (of the donee) created by (his) acceptance, for then the acceptor himself would (virtually) be the donor; since gift consists in the effect of raising another’s right to the property, and that effect would here depend on the donee. Just as a sacrificer (*i. e.* the person at whose cost and for whose benefit a sacrifice is performed),—though making relinquishment of (his right) to the things offered to the gods—is not called the *hotá* (the performer of the *homam*,) but the priest alone is denominated the *hotá*, as performing the act of throwing (the things in the sacrificial fire) which is the reason of the name *homam* (being applied to the ceremony). The same would be the

case here. Besides the term gift is used even previous to the acceptance (by the donee), in the following sacred text,—‘Thinking in the mind of the intended donee shall pour water on the earth: an ocean has a limit, but a gift has none.’ But is not receipt acceptance? For the affix in the word *svikāra* (acceptance) implies a thing becoming what it before was not; and the act of making his own, what before was not his, constitutes acceptance or *svikāra*. How then can right (of the donee) accrue antecedent to that? The answer is, though right has already arisen, still it is by the act of the donee consisting in the knowledge that the property is his own, rendered capable of being dealt with according to pleasure; and such is the meaning of the term acceptance (*svikāra*). From its association with officiating as a priest and teaching, receipt (*pratigraha*) is, without question, a mode of acquisition though it do not immediately create proprietary right: for in the case of officiating as a priest, and so forth, right (in the wealth so gained) arises solely from the gift of the fees. Or the survival of the son at the time of the father’s demise, may constitute his acquisition. Besides in the case of property left by a brother or any other relative, the right of the rest of the brethren or other heirs must, however reluctantly, be acknowledged to arise either from the death (of the proprietor) or from the survival of the rest at the time of his decease. Let the same be the case here also.”

50. But this is not tenable. For the argument, “it being based upon the authority of the Śāstras,”—has already been obviated by the demonstrated conclusion that the notion of property is derived from profane authority. As also for what has been said in the passage,—“And that is also seen in the world &c.”—that too is only specious; for should the donee refuse to accept, his right certainly does not arise; again, if by (mere) relinquishment in favor of a particular person, his right accrued, notwithstanding his refusal to accept (the gift,) then it would follow that the donor could not possibly grant (the property relinquished in favor of a particular person) to any other person. As also for the argument, “for then the acceptor

himself would (virtually) be the donor ;" that again is not consistent with reason ; because, gift being an act whereof the effect is the generation of another's right, the term gift implies the act of inference &c., (by the donor) in favor of the acceptance by the donee, but the production of that effect is not possible without the acceptance by the donee ; hence the act, of the donee completes the gift, but that alone does not constitute the gift. As also for what has been said in the passage " just as &c.,"—that too is not correct. For the distinction does not obtain in the *agni-hotra* and the like *homas* which are (personally) performed by the sacrificer ; again in the *darsapûrnamâsa* and other sacrifices where the relinquishment only is made by the sacrificer, but the offerings are (actually) thrown (in the sacrificial fire) by the priests, the function (of the priests) being distinct (from that of the sacrificer,) the use of the term *hotâ* (for a priest) implying that function, is not open to exception. The term *homa*, however, does not signify the throwing (by the priest) of what has not been relinquished (by the sacrificer). But whether that relinquishment which is the distinctive feature (of a *homa*) is carried out through the agency of one's self, or through the agency of another person, that makes no difference. Hence a sacrifice (*yâga*) does not depend, for its completion, on the throwing (of offerings), but a *homa* depends on that alone. The act of the donee, however, is the *sine qua non* of gift, for without it gift cannot be accomplished.

Again what has been said in the passage, " Besides &c.," that also is nothing. For abdication alone is ordained therein, but not gift ; accordingly it has (subsequently) been said that " the donor reaps its fruit," for otherwise this (portion) would be superfluous. Had the fruit of gift been otherwise deducible in what is intended for gift, the passage " the donor reaps its fruit," would have become useless. Hence what is intended by the verb " give" (in the term gift) in the passage cited before, is abdication only—consisting of the pouring of water, in favor of the intended donee, but the completion of the gift takes place only in case of acceptance by the donee of what is so abdicated. This is the best interpretation. Accordingly, in the formula for declaring the

intention (of making a gift,) the expression used by the learned is, "I abdicate," and not "I will give" or "I give." Hence, although the fruit of gift arises (before acceptance), still because the right of the donee accrues from acceptance, therefore the proposition that acceptance is an acquisition, is not liable to exception. For the term acquisition means an act producing property. Accordingly Prabhākara says:—"This has been irrationally asserted by some one: to say that acquisition does not produce property is a contradiction in terms." The text of this has already been explained. Moreover if acceptance, consisting in the knowledge that this property is mine, did only render that property to be capable of being dealt with, wherein the right accrued merely by the act of the donor, then the term acquisition as applied to acceptance would be metaphorical in its meaning; and the bestowal of that property on any other person (in case the intended donee refuse to accept the gift) would be, as mentioned before, unreasonable; also in case of his non-acceptance, the destruction of his right already produced will have to be assumed. Nor can it be said that it must be acknowledged by you also, that by the act of the donor his right being extinguished, a common right of donees is produced; otherwise if his right be extinguished and no other's right accrue, then the thing being without an owner, the right of any person might, by means of seizure &c., arise in that thing, just as in grass, fuel, &c. of a forest, which have not been appropriated, and the preservation (of the thing by the donor so long as it is not given to any other person) would be impossible: so also in our opinion, the right of a particular person produced on the abdication in favor of that particular person, is extinguished by his non-acceptance, and the right of another arises by his acceptance; thus there is no such contradiction as the destruction of a common right and the production of an exclusive right (which you cannot but admit). Because a common right in such a thing being not recognized, the production thereof is without authority, and is neither acknowledged by reason of *multiplicity*. But notwithstanding the extinction of the donor's proprietary right, consisting in the capability of being dealt with according to pleasure, the gift

itself being incomplete in the absence of the effect, namely, the production of another's property, the donor who aims at attaining the merit held out by the injunction (for gifts) certainly retains the right of preserving (the subject of the gift) till the bestowal (of the same on some other fit person); in the same way as (a sacrificer has the right of preserving) the clarified butter poured on the sacrificial fire until it is burnt to ashes, by reason of the declaration of imperfection which would otherwise be the consequence of non-conformity with the prohibition of (the offering) being touched by what should not be touched. Hence it follows that although another's right be not generated, still there is no harm in not preventing (by the supposition of a common right) the (supposed) consequences of the thing being without an owner, and of its seizure. Upon this alone is based the practice of the learned, consisting in the preservation of the subject of gifts (to men and gods). Nor can it be argued that the injunction being assumed by us to refer solely to abdication, the fact of the production of another's right would not at all be important, because abdication, such as is described above, is what (we say) is intended by the injunction, for otherwise in the case of *homa* also, the state of being burnt to ashes would be unimportant.

As for what has been said, namely,—from its association with officiating as a priest and teaching, acceptance though it do not immediately create proprietary right, is still an acquisition in a metaphorical sense only,—that also is from ignorance. Since in the case of officiating at a sacrifice, the shares to which the priests and others are entitled, are, at the time of distributing the fees (*dakshinā*), allotted to them in the shape of wages. Accordingly in the aphorism of Jaimini, viz., "Salary is the service of a master," the use of salary (to signify the fees) has been ascertained: the details, however are to be found there. Salary is no other than the wages causing inducement of a servant. So also, in teaching, the pupil at the end of his education gives to the teacher such wages for teaching as satisfies him. But in case of regular service for wages, the paid tuition is *quasi* degradation. Hence as distinguished from acceptance as well as from service (*nirvesa*) implying

(regular) wages, officiating at a sacrifice and teaching have been separately enumerated as being a mixture of both. Hence these too are acquisitions in the primary sense. Accordingly also the term *honorarium* (*dakshina*) is applied to what is given to a priest and a teacher.

As also for the argument that it is undisputed that in the property left by a brother or any other relation the right of the rest of the brethren or other heirs is produced either by the demise of the owner or by the survival of the brethren &c. at the time of his decease; therefore also in the case of sons &c. let the demise of the father &c., or the survival at the time of their decease, be the cause of right, but not the birth of the sons &c., which is not applicable to all cases;—that also has been already confuted by showing that it must be admitted that birth is a cause of right.

51. As also for what has been said, namely, that if birth be held to be a cause of proprietary right, then the text of Manu, viz:—"After the father and mother &c.," cannot consistently be explained;—for if it be considered to mean the prohibition of previous partition, then the objection would arise that it intends a meaning not its own; and as the purpose of partition is mundane, an injunction for partition as well as an injunction for its time is impossible. Nor can it be taken to mean an obligatory injunction regarding partition which stands (but for this injunction) optional, for in that case there would be a conflict with the injunction regarding dwelling together; therefore it must be admitted that the text is intended for establishing that while the father and the mother are alive there is no ownership by birth to their property, but that it is on their demise that the right of the sons &c. accrues to their estate.

52. The above argument is extremely unsound. Because the objection that it imparts a meaning not its own, is equally applicable (to the view taken by him); and because there can be no incongruity, in considering the above text to be an injunction as to the time for partition, inasmuch as there was no independence (of the sons) before

(the demise of the father); and because even it be held as a superfluous injunction regarding the time (for partition) which proceeds from the desire (of the co-sharers for partition) there can be no impropriety, it being a text on positive law.

Hence is obviated also the objection that partition would be admissible only at the moment immediately following the father's decease, for there is not in this instance any particular objection like the danger to the new-born infant's life in the case of a sacrifice on the birth of a son,—against the immediate sequence of the effect (when the cause is present). Neither is the causality of the father's decease indicated by the injunction regarding the time for partition, for otherwise, as the effect must necessarily follow the cause, it would be sinful if partition be made after the death of the parents (and not immediately on their death). Moreover the extinction of the father's right arises also from degradation and retirement: but the right (of the sons) by birth holds equally good (in these cases). In the case of degradation, however, the extinction of right and the disqualification for participation arise only if expiation be not performed. Otherwise penance too, which can be accomplished with (one's own) wealth, could not be performed by the parents with their own wealth.

Accordingly, (it must be admitted that) the following text also, namely, "When the mother is past child-bearing &c.," declares an injunction with reference to the time for partition. There is not, however, in that event the extinction of right as in degradation &c.: but the extinction of (the father's) right is deduced solely from profane authority as well as from the prohibition of (his) participation, as in the case of a brother and others (who are excluded from inheritance by reason of disqualification); this will be mentioned (hereafter).

53. Moreover, Jímútaváhana himself appears to give up his prior contention, and to admit partition by sons even when the father's right is not extinguished; for he has, after having asserted that—"Thus there are two periods of partition: one, when the father's right ceases; the

other, by his choice while his right endures,"—and then meanwhile having found fault with the three periods of partition mentioned in the *Mitáksharā*—come to the conclusion that,—“Therefore two periods of partition are rightly affirmed: one, when the father’s right is extinguished by degradation, extinction of temporal affections and death; the other, by the choice of the father while his right subsists.” Now how does (in the latter case) the right of the sons arise in the property of the father? And how is it that there is no conflict with the texts ordaining absence of ownership (of the sons) while the parents are alive? Partition being impossible of what is not property, how can partition be made by them? Where is the consistency of one part with another of his (*Jímútaváhana*’s) own book? For (in another part) he says, “The cessation only of the father’s right is intended by the text, ‘After (the demise of) the father and mother &c.’; with this purpose the term *after* is used instead of the term *dead*: the meaning being “after the cessation of the father’s right, and the cessation of the father’s right arises as well from his degradation and extinction of worldly affections as from his death &c.”

Again he says:—“Here also, as it is indicated that the son’s right in the father’s wealth arises from such causes as the extinction of the temporal affections, this is one period of partition.” Now if by the term, “from such causes as the extinction of the temporal affections,” the cessation alone of the father’s right be intended, in that case it is contradictory to what has been said, namely, the other period of partition is by the choice of the father while his right subsists.

Again when he maintains that the survival alone of the sons and others at the time of the extinction of the father’s right is a means of acquisition, how can he assert the right of the sons to the property of the father while the father’s right subsists. Certainly the father’s right cannot (according to his opinion) cease simply by reason of the mother’s being past child-bearing in the absence of the father’s retirement to a forest; therefore it becomes difficult to apply the term ‘heritage’ to the property whereof partition is made while the father’s right is not extin-

guished ; for the meaning of the term heritage as explained by himself is wanting, viz. : “ The term heritage is technically used to signify wealth in which right dependent on relation to the former owner arises on the extinction of his right.” These and similar confusions arise (in pursuance of the doctrines propounded by Jímútaváhana).

54. But it is to be observed by those that are unprejudiced that every thing becomes consistent if right by birth be admitted. Accordingly in the Mitákshará and other works it has been said that the term *heritage* signifies that wealth wherein another's right arises dependent on relation to the former owner : but the phrase “ on cessation of the previous owner's right ” has also not been inserted in it. Hence it is established that heritage is two-fold.

The argument in support of the three periods of partition mentioned in the Mitakshara will be set forth at length when that subject will be dealt with ; there is no use of discussing here what is incidental to the subject under enquiry.

55. The term ‘ partition ’ has been explained in the Mitákshará, thus, “ Partition is the adjustment into specific portions, of divers rights arisen in the entire estate.” But Jímútaváhana introduces this definition as the opinion of the adversary in the following passage,—“ Nor can it be affirmed that partition is the adjustment into a particular portion of that right which all the co-sharers have through the sameness of their relation over the entire property ;”—and then finds faults with it, thus,—“ Because the relation (of one co-heir to the owner) opposed by the co-existence of another relative produces a right—determinable by partition—to portions only of the estate ; for (otherwise) there would be *multiplicity* in the assumption of the accrual and extinction of a right to the entire estate ; and it would be useless as there would not result the effect, viz. the power of dealing with the property according to pleasure ;” and then goes on,—“ What we say is, that partition consists in the act of manifesting, by the casting of lot or otherwise, the right which had arisen in lands, gold &c. and which extended only to a portion of them,

and which was previously unascertained, being unfit for exclusive appropriation, because no evidence of any ground of discrimination existed; or partition is the act of ascertaining the right or of making it known,—by the derivation of the term.”

56. The author of the *Dáyatattva* has referred to this view of *Jímútaváhana*, and censured it thus:—“ For how may it be certainly known, since no text declares it, that the lot for each person falls precisely on that article which was already his.

“ Again if wealth be gained after the father’s demise, by a brother riding one of two horses, which belonged to the father, it is universally acknowledged, that two shares of it appertain to the acquirer; and one to any other co-heir. In such a case when the original property is subsequently divided, if that very horse be obtained by the acquirer, then according to the opinion of those who affirm partial rights, the horse was already his; why then should another brother share the wealth gained by him? But if the horse be obtained by another, equal participation of wealth so acquired would be proper, since it is gained by the personal labour of the one and by the work of a horse belonging to the other.

“ But in fact, partition is the adjustment by lot or otherwise into a right over a specific portion, of that right which did, by reason of the same relation of the co-heirs, accrue to the whole property, upon the extinction of the right of the previous owner.

“ Thus, even the accrual and extinction of rights over the entire estate are to be admitted, in the same manner, as in the case of the re-union of co-heirs, the destruction of rights over portions, and the production of rights over the entire estate, are acknowledged.

“ This too is (in a manner) acknowledged by the author of the *Dáyabhága* who himself writes:—In the following text of *Vrihaspati*, namely: ‘ He who being (once) separated dwells again through affection, with his father, brother or paternal uncle is termed re-united,’ because the father, the brother, the paternal uncle and the like, are from their birth likely to be united as regards

the property acquired by the father or the grandfather; they alone may become re-united, when being once separated they annul, through mutual affection, the previous partition with the agreement to this effect, that the wealth which is thine is mine, and what is mine is thine, and remain like one house-holder in any transaction. But not an association of merchants who, unlike the co-parceners, are by the mere union of stocks formed into a partnership, nor the mere union of estate of separated co-parceners without the stipulation based upon affection (are to be looked upon as instances of re-union).

“By reason of the right being common, the text of Kátyáyana, which says: ‘A co-parcener is not liable for the use of any article which belongs to all the undivided relatives,’ becomes consistent in its literal sense; inasmuch as his own right extends over every article; accordingly there can be no theft in such a case, as will be shewn hereafter.

“Similarly also, by the text of Nárada, namely: ‘Separated, not unseparated, brethren may reciprocally bear testimony, become sureties, bestow gifts and accept presents,’ the prohibition of mutual gift &c. amongst undivided co-parceners becomes logically consistent; because (in such a case) there is an impossibility of gift and acceptance, inasmuch as the acceptor had a right to the property given, even before a gift of it was made.

“All the co-parceners are entitled to the fruits of all acts, either temporal or spiritual, which are performed with the use of the joint property; since their right is common. This is affirmed also by Nárada: ‘Among undivided brethren, duties continue common; but when partition takes place, their duties also become different.’

“Vyasa ordains: ‘Let no one without the consent of the others, make a sale or gift of the whole immoveable estate nor of what is common to the family.’ Here, from the use of the adjective ‘whole,’ it appears that the right of each parcener accrues to the entire estate.

“Therefore, when there are two persons equally related to the deceased, each of them considers the property left by the deceased to belong to himself as well as to the other coheir. Gift and the like by the one for his own pur-

pose, is prohibited, should the other's consent be wanting.

"Therefore it is established that the right does not accrue to a fractional portion."

57. It appears that this is subscribed to also by the author of the *Mitākṣharā*; for, he says: "Partition is the adjustment into specific portions, of divers rights which have arisen in the entire estate."

But what is to be decided here is this: Whether ownership inhering in the owners and determined by the whole of the property, also whether property inhering in the entire estate and determined by the owners, exists jointly in all or exists separately in each? The first (alternative) is not tenable. Since in case of destruction of any one of those in which the ownership or the property inheres, there would be great *multiplicity* in assuming their destruction, and the production of them in all the remaining ones; and since the dealing with any article by any one (of the co-owners) would be impracticable in consequence of the want of power (in any one co-owner) of giving away or selling or using in any other way, according to pleasure. Neither is the second (alternative) tenable; because on partition the destruction and the reproduction of all of them would have to be assumed; and because that would be contrary to the following passage (of the *Mitākṣharā*), *viz.* "Partition is made of what was property, but property is not generated by partition."

What we say here is this:—there are certainly rights existing separately in each, by reason of the sameness of the relation: when partition takes place amongst the co-owners, the right of each ceases to what is allotted to the others, in the same way as by death, retirement and the like: so there is no inconsistency. And this is what is meant by "adjustment;" otherwise, the generation of right to a specific portion would have been used. Accordingly the cessation only of the right is assumed, but the production of a different right is not assumed. Agreeably to the opinion of *Jīmútavāhana*, it being not determined previous to partition, as to what property the right of a co-sharer accrues in reality, there would be an end of all temporal

affairs as well as spiritual ones enjoined by the Sruti and the Smriti;—which can be performed by wealth. You (Jímútaváhana) impute to the author of the Mitákshará, the defect of *multiplicity* for his assumption of the destruction and the production of rights, but yours is a still greater one (that of inconsistency) when you admit the production of a different right of each (of the co-sharers) in the property of the others by consent given by all (on re-union) after partition. You ascribe uselessness to the right over the entire estate by reason of its unfitness for use: but the same is equal if the right be admitted to arise in a fractional portion. There is no use in spinning out the matter.

CHAPTER II.

LAW OF PARTITION.

PART I.

SEC. 1—8. When and by whom partition is made.—9. Distribution by the father not arbitrary.—10. Of allotment of shares to wives.—11. Of equal Distribution.—12. Father's double share in self-acquired property.—13. Not so in ancestral property.—14. Equality of shares preferable in all cases.—15. Partition with one who wishes not to take any share.—16. Partition of heritage extends to the third degree; participation *per stirpes* not *per capita*.—17. Of partition of ancestral property recovered by father and of the father's right of disposal.—18. Mother's life no bar to partition.—19. The mother entitled to a share.—20. Initiation of uninitiated brothers.—21. Marriage of sisters, &c.—22. Of alienation of immoveable property.—23. Partition may take place at the desire of a single co-sharer.—24. Of a co-sharer born after partition.—25. Of partition by brothers of different classes.

1. Now are determined the periods, when, and the persons by whom, partition may be made.

On that subject Manu says:—"After (the death of) the father and also the mother, the brethren being assembled together shall equally divide the paternal estate; for they are not masters while those are alive."

"Paternal," signifies, belonging to the parents, since both are previously mentioned: hence by the phrase "after the father," a period of partition of the paternal property, is expressed; and by the phrase "after the mother," a period of partition of the maternal property, is shown; the term "and also" (*cha*) however, is used for the purpose of indicating other periods, but not for the purpose of laying down the restriction, (that partition is to be made only) "after the death of both," for the mother's life does not constitute a bar to the partition of the pater-

nal property, nor the father's life to the partition of the maternal property.

Accordingly the author of the Sangraha says :—" Partition of paternal property may take place notwithstanding the mother is alive, because in the absence of the husband, the mother has no independent ownership (in the property of her husband;) likewise also the partition of the maternal property may be made while the father is alive, for when there are children, a woman's lord is not the lord of her property." The meaning is: Inasmuch as, when there are sons, the mother has not independent ownership in the property of her husband even after his death, therefore even while she is alive the partition of the paternal property is reasonable; and because the husband has no right to the property of the wife, when there are children, therefore even while he is alive the sons are entitled to divide the maternal property.

Hence also the text, "For they are not masters while those are alive" is to be held as establishing the absence of independence in respect of the property of the father and mother respectively; and not as establishing the absence of right, since it has been demonstrated that the sons' right to the property of the father (and the mother?) accrues by birth.

In the following text, namely,—“Should the father effect partition, he may separate the sons at his own desire, or (may separate) the eldest son with the best share; or all may be equal sharers;”—Yājñavalkya, by declaring that the father may separate the sons at his desire, indicates that while the father is alive, that too is a period of partition when the father feels a desire for it. In that case, again, the father alone is the person who is competent to make partition; since the want of the sons' independence has been established by the text, viz.,—“For they have no right while the father is alive and free from defect.” From the adjective “free from defect,” it appears that what is meant is, that although the father be alive who has defects like degradation, still because the sons are not required to remain under his control, therefore that too is a period of partition when they desire; and in that case the sons are competent to make partition.

There is also another period of partition at the desire of the sons, namely, when the father feels no concern for property and has his sexual appetite extinct, and the mother is past child-bearing. Thus Nārada having spoken of partition after (the demise of) the father, in the text, namely,—“Hence after (the demise of) the father, the sons may divide his estate equally;”—goes on to say:—“Also when the mother is past child-bearing and the sisters have been given in marriage; or when the father’s sexual propensity has become extinct and his affection (for property) has ceased.”

Jīmútavāhana, however, reads the text as “the father is lost or houseless,” (instead of “the father’s sexual propensity has become extinct;”) and explains that “lost,” means, degraded; and “houseless,” signifies, no longer a householder. He also says that the reading, viz.,—“the father’s sexual propensity has become extinct,” is unauthorized. But this is unreasonable, for that reading has been adopted in the Mitāksharā and other commentaries. The passage “the sons may divide his estate” (occurring in the preceding text) is to be construed with the latter text (of Nārada).

Gautama also, after declaring,—“After (the demise of) the father, the sons may divide his wealth,”—goes on to say,—“Also in his lifetime, when he desires, if the mother be past child-bearing.”

Also Vrihaspati ordains,—“On the demise of the parents, partition among brethren has been declared; it may also take place while they are alive if the mother be past child-bearing.”

Again even when the mother is capable of bearing more sons, and the father is unwilling, partition may take place at the desire of the sons, if the father suffer from a lasting disease or be addicted to vice. Thus Sankha says:—“Partition of inheritance may take place against the will of the father, if he be old, diseased, and have his intellect perverted;”—also Nārada says:—“A father who is afflicted with disease, or is influenced with wrath, or whose mind is engrossed with a beloved object, or who acts otherwise than the Śāstras permit, is not competent to make partition.”

2. To what has been said on the subject in the *Mitákshará*, namely, that the father's death is one period, when the mother is past child-bearing is the second, and the third is in the lifetime of the father when he desires,—the following objection is raised by *Jímútaváhana*:—“If the cessation of the mother's courses be joined, as a condition, with the extinction of the father's affections, then since the nubile age is ordained by *Manu* in the text, viz.,—‘A man of thirty years shall marry a lovely girl of twelve years; or a man of twenty four, a girl of eight years: one who marries sooner deviates from virtue;’—and since the same sage ordains the age in which a man should adopt another order, in the text,—‘After fifty a man shall retire to a forest;’—therefore at that time, the cessation of the mother's courses being impossible, there could be no partition at the desire of the sons although the father become a hermit or his temporal affections be extinct. If it be said that the extinction of the father's temporal affections without the condition annexed to it, constitutes a period of partition of paternal property, then even when the father is degraded partition could not take place if his temporal affections be not extinct. If it be alleged that this too is another period of partition, then there would be four periods of partition, viz., the demise of the father, his degradation, the extinction of his affections and his desire. Hence two periods only are reasonable: one, when the father's right ceases by death, degradation or the extinction of temporal affections; the other, at the pleasure of the father while his right subsists.”

This objection has arisen from not understanding the intention of the author of the *Mitákshará*. For he does not lay down the restrictive rule that there are only three periods of partition; because he does immediately establish other periods by the passage ‘likewise, &c.’ and because there is no reason for such a rule. The proposition, again, that one period of partition is on the cessation of the father's right, and the other, at the father's desire although his ownership have not ceased,—is erroneous. Since in that case, the text, “when the mother is past child-bearing,” would become unmeaning, for the father's right is not extinguished by reason of the mere fact of the cessation

of the mother's courses; and since the cessation of the father's right cannot possibly be the occasion of partition, inasmuch as right has been established to accrue by birth. Similarly also, right does not cease under the circumstance of being afflicted with a lasting disease; hence also the restrictive rule asserted by you that there are only two periods of partition is difficult to be maintained. Nor can you say that you approve the proposition that right does not cease when the father is afflicted with a lasting disease, for it would be contrary to the text which enjoins partition on that event.

3. As for what has been said by the same author, namely,—“The condition ‘when the mother is past child-bearing,’ refers to the property inherited from the grandfather and other ancestors. Since, the mother being past child-bearing, the birth of more sons becomes impossible, hence partition among sons may then take place, but by the choice of the father, for if ancestral property were divided while the mother was capable of bearing children, then those born subsequently would be deprived of subsistence; nor is that reasonable, for it is ordained,—‘Those who are born and those who are not yet begotten, as well as those who are in the womb, all require maintenance; the dissipation of their hereditary source of maintenance is censured.’—Inasmuch as there are two periods for partition of paternal wealth, therefore Manu, Gautama and other sages have used the term ‘after,’ leaving the term death. ‘After,’ signifies, extinction of the father's right. But if the above text referred to paternal property, then the text,—‘But one born after partition shall take the father's share only,’—would be without any subject to which it may be applicable, because there is no possibility of the birth of more sons, when the mother is past child-bearing; nor can it be at all supposed to relate to the mother's estate, for in that case the mother would be deprived of her property. Hence the condition ‘when the mother is past child-bearing,’ refers to the estate of the grandfather. Nor can the circumstance of the mother being incapable of bearing more children be a cause of partition independently of choice, for there can be no partition without a will to effect it; then

the question occurs, whose must that will be ? and the solution is that it must be the father's will, as deduced from the text of Gautama, which says,—‘ After (the demise of) the father, the sons may divide the estate, or while he lives if the mother be past child-bearing, and he desires it.’ Hence there are only two periods for partition of the grandfather's estate ; one is, when the parents are no more, and the other, when the mother is past child-bearing and the father desires it.”

This too is, but the effect of carelessness : because the objection of dissipation of the subsistence is equally applicable to paternal property ; and because the objection that the text, ‘ But one born after partition, &c.,’ would be without a subject, holds equally good in case that text be held to refer to the estate of the grandfather and other ancestors ; also because it cannot but be admitted, as it is universally admitted, that when a father who retains his temporal affections becomes tainted with degradation and the like, partition of even the grandfather's estate may take place at the desire of the sons. But as it will be established that in the property of the grandfather, the ownership of the father and the sons is equal by reason of texts such as, —“ The ownership of the father and the son is the same &c.,”—therefore in fact partition thereof at the desire of the sons is not improper. As for a different interpretation of the above text, and the supposition that the absence of mastery relates to his estate &c., all these will be refuted on the occasion of considering that text.

4. We say that there are only three periods of partition in this way, namely, when the father is alive and worthy of independence, his desire alone is the cause of partition ; but if he is not worthy of it by reason of degradation, mendicancy and the like, then the desire of the sons only ; on the demise of the father, however, the causality of the sons' desire, necessarily follows. Otherwise there would be great confusion, for it would be unreasonable to suppose that the circumstances, namely, extinction of desires and the like, do sometimes separately and sometimes conjointly constitute the cause of partition, and because it would be difficult to discriminate between what

constitutes the principal cause and what its concomitants. Hence in certain texts the enumeration of some of the circumstances and the omission of the others become consistent.

By reason of the simplicity of the supposition of one radical revelation, all the texts should be considered to indicate only the absence of the father's independence by 'extinction of desire' and the like. To this very effect is the import of texts like the following:—"For they are not masters while the parents are alive:" (Manu). "For sons have not ownership while the father is alive and free from defect:" (Devala). "And it is right even while they are both living:" (Vrihaspati).

Hence Vyása and other sages have declared two alternatives, namely, one which is preferable, is the common abode of brothers while the parents are alive; the other, where by their consent and the like, the eldest or any other who is capable of managing the affairs of the family becomes the head of the family and the rest live under his control. Thus Vyása says:—"For brothers, common abode is ordained while the parents are alive." Háríta declares,—“While the father lives, the sons have no independence with regard to receipt, expenditure and deposit of wealth. But if he be deceased, remotely absent, or afflicted with disease, let the eldest manage the estate.” Sankha and Likhita, however, most clearly declare,—“If the father becomes incapable, let the eldest manage the affairs of the family, or with his consent a younger brother conversant with business; partition of the wealth does not take place, if the father be not desirous of it; when he is old or his mental faculties are impaired, or his body is afflicted with a lasting disease let the eldest like a father protect the goods of the rest; as (the support of) the family depends upon the wealth, they are not independent while they have their father living, or while the mother is so.”

Therefore there are only three periods for partition, in the way mentioned above.

5. In the text of Manu on this subject the term “assembled together” only recites (but does not enjoin) the

assemblage (of co-sharers) which may take place, like the plurality (recited by the plural number in the term "brethren,") otherwise partition could not take place, at the desire of one co-parcener or where there are two brothers. The term "equally" however is restrictive; but this will be fully considered hereafter.

6. Jímútaváhana says:— "Since the term 'parents' (in Vrihaspati's text) bears the dual number, therefore partition by uterine brothers, of even the paternal property should be made only on the demise of the mother. But the use of the mother's demise has no reference to the partition of the mother's estate; because the text 'even while they are living' cannot consistently refer to the mother's estate, therefore it must be admitted to refer to another's property: hence, because by the term 'even' in the text 'even while they are both living,' the existence of the parents is declared to relate to the very same case to which the non-existence of the parents stands as the cause, therefore the demise of the mother ought not to be interpreted as referring to the estate of the mother."

But this is not consistent; for in the text of Manu the terms 'father' and 'mother' are separately set out: also where it is otherwise, (as in Vrihaspati's text) it is reasonable to interpret the dual number as only intending reference to partition. If it were not so, then there would be no earthly reason for connecting the property of one with the demise of another.

What again is the meaning of the passage, namely,— "Because the text, 'even while they are both living &c.' cannot consistently refer to the estate of the mother &c."? If it be that the text does not refer to the property of the mother, by reason of the absence of her independence while the father is alive, in that case the father has ownership even in the property of his wife notwithstanding the sons, therefore her demise too cannot have any bearing upon that, hence would arise the objection of having reference to something else.

And as for a different meaning of the above passage, it will be shown that that is an absurd assertion. Hence the proposition, affirmed by the author of the Sangraha

and others,—viz., that the mother's demise relates to her property,—is consistent; since the reason is earthly.

7. The common abode of the brethren, however, is preferable, as while the parents are alive as likewise after their demise. Thus Sankha and Likhita declare,—“They may live together if they please, for being united together they may attain to prosperity.” The meaning is, that being “united together,” i., e., dwelling together they may attain to prosperity through the assistance rendered by each other in the acquisition of property. So Nárada says.—“Let the eldest brother, like a father maintain the rest together; or let a younger brother who is capable, do so: the maintenance of the family depends upon ability.”

So Manu ordains,—“The eldest brother may take the patrimony entire, and the rest may live under him as under a father. By the eldest son as soon as born, a man becomes father of male issue, and is exonerated from the debt to the ancestors: such a son therefore is entitled to take the entire heritage. That son alone on whom he devolves his debt and through whom he tastes immortality, was begotten from a sense of duty; the rest are considered as begotten from love of pleasure. Let the eldest like a father, support the younger brothers, and let them according to law behave like sons towards the eldest brother. The firstborn exalts the family, or on the contrary, destroys it; the firstborn is the most respectable in society, the firstborn is honored by the good in this world. If the eldest brother acts as an eldest brother should do, he is as a mother, he is as a father. But one who does not act as an eldest brother should do, is still to be respected as a relative. The eldest brother who from avarice defrauds his younger brethren shall not be considered as the eldest, shall forfeit his share and shall be punished by the king.”

Agreeably to all these texts, the joint abode of all the brethren in obedience to the eldest brother who is possessed of good qualities, is preferable.

But if increase of religious merit be desired then partition should be made. It has been so declared by Manu and Prajapati;—“Thus let them dwell together, or apart for the sake of religious merit, since religious duties are

multiplied apart, therefore separation is virtuous." Religious duties consist in the worship of gods &c., for that alone is never heard to be separate in a joint family. Accordingly Vrihaspati says:—"Among those who live in communality, the worship of the manes of ancestors and of gods and Bráhmanas, is common : but among the separated the very same worship takes place in the house of each."

The author of the Sangraha, however, says that the term increase of religious merit, includes also the increase of religious merit by means of the establishment of the sacred fires and the like ceremonies:—thus he says,—By partition the paternal estate is rendered the property of the sons; when the right of property arises, they commence; hence separation is virtuous: "commence," *i. e.* accomplish the ceremonies of establishing the sacred fires and the like.

But this has already been refuted by us when establishing the right of sons to the performance of ceremonies enjoined by the Sruti and the Smriti, even before partition by reason of the sons' right to the paternal property accruing by birth alone. Therefore by the term religious duties, are to be understood only such religious duties as the five great sacrifices.

8. The phrase "and the sisters given in marriage," is however inserted not for the purpose of marking a period of partition, but for the purpose of shewing that their marriage must be celebrated: similarly the text of Nárada, *viz.*,—"Whatever remains after the father's gifts are given and the paternal debts liquidated out of it, should be divided by the brothers so that the father may not remain a debtor,"—ordains the obligation of paying off the father's debts, but not a period of partition.

9. Again when the father separates the sons at his desire, then also arbitrary will shall not be exercised, but the meaning of Yogisvara's text is, that of the two methods *viz.* "Or (may separate) the eldest with the best share, or all may be equal sharers,"—that method which he chooses may be adopted.

Professor Vijnānesvara explains the above text in the following way :—" The eldest, with the best share ; the middlemost, with the middlemost share ; the youngest, with the smallest share ; or all the eldest and the rest may be made equal sharers."

The oriental writers, however, say that the phrase ' at his desire ' indicates a separate method altogether, and distinct shares of the eldest and others and equal shares constitute two methods : thus there are three methods ; accordingly the first term " or " in the text " or (may separate) the eldest,"—becomes significant, as having reference to the mode indicated by the phrase " at his desire : " it would become far-fetched, had it reference to the method which is subsequently set forth.

And they assign the following reason for that (view) :—In the text of Nārada, viz.,—" Or the father himself when old may separate the sons, either (he may separate) the eldest with the best share, or in any way he pleases,"—because one mode of unequal distribution is set forth by the passage " either the eldest &c.," and then it is said " or in any way &c." therefore it is indicated that there is also another mode of distribution by the desire of the father. Also Hārīta says :—" A father, having during his lifetime distributed his property may retire to the forest, or enter into the order suitable to an aged man ; or he may remain at home having distributed a small portion (of his property amongst his sons) and retaining a greater portion ; should he be pinched, he may take back from them."—" The order suitable to an aged man," means the fourth order ; " be pinched," means, be reduced to poverty :—here too a different mode is expressed by the passage " having distributed a small portion." Therefore by reason of the same foundation (of Yogīśvara's text) with these (texts) it is reasonable to say, in order to include the above mode of partition in Yogīśvara's text, that the passage " at his desire " (in Yogīśvara's text) indicates nothing but a separate mode.

This is wrong : for the term " or " does not become far-fetched (by having reference to the subsequent mode,) since it may, with propriety, be construed in either way. Neither is the reason assigned correct. Because if the object

of the phrase 'at his desire' (in Yogísvara's text) be to include another mode mentioned in other texts, then the latter half (of Yogísvara's text) would be merely unnecessary; for as those two modes also are mentioned in other texts, these may likewise be included under the phrase "at his desire": there would certainly be very little necessity if the object of that phrase were to include a mode other than these (two modes). And because desire being under no restraint, the meaning of that (other supposed mode) cannot be ascertained without consulting other texts, (but it must be ascertained) so that arbitrariness may be prevented: but there would be no necessity for consulting other texts, if the phrase "at his desire" be interpreted to be inserted for the purpose of removing the idea of any rule regarding the applicability of the two modes mentioned by (Yogísvara) himself. Nor can it be said that inasmuch as option is indicated by the very assertion of the alternative, the phrase "at his desire" is useless; since it is far more reasonable to say that the phrase though it is superfluous, is intended to have reference to the two modes mentioned by himself, with the object of removing the idea of the alternative being governed by any rule, rather than that the latter half (of Yogísvara's text) is useless.

Again, the same foundation (of Yogísvara's text) with the texts of Nárada and other sages, is not inconsistent with the interpretation put by Vijnánesvara; for the two modes mentioned in Yogísvara's text, are declared in other texts also. Nor can it be said that let the meaning of Yogísvara's text be, that arbitrary will alone constitutes a distinct mode; for in that case the following text would be meaningless, viz.: "A father who acts otherwise than the Sástras permit has no power in distribution"; for, if (the exercise of) unqualified will were agreeable to the Sástras, then acting otherwise than the Sástras permit, would be impossible. Had will been the only cause, then the following text of Kátyáyana also would have been useless, viz.:—"But let not the father distinguish one son at a partition made in his lifetime, nor whimsically deprive any one (of his share) without sufficient cause."—"Let not distinguish," means, let him not make any son benefitted by any arbitrary special consideration, otherwise than by the

specific deductions for the eldest and others,—as enjoined by the Śāstras ; “sufficient cause” again, is such as degradation &c., permitted by the Śāstras ; “whimsically” means, through anger or through affection towards the son of a beloved wife ; “deprive” signifies, render destitute of shares.

As for the following text of Yogísvara, namely,—“Among those separated with greater or less allotments, (the distribution) made by the father is pronounced, lawful,”—that again has, consistently with the text, viz.,—“A father who is afflicted with disease or incensed with wrath &c.,”—been explained by Vijnānesvara himself to mean only this :—“lawful” *i. e.*, if in accordance with law, then what is made by the father is pronounced as finally made *i. e.*, cannot be revoked ; but what is not lawful *i. e.*, not made agreeably to the Śāstras, can certainly be revoked.

Similarly are to be explained also the following texts of Vrihaspati and Nārada (respectively) :—“Shares which have been assigned by the father to the sons, whether equal, greater or less, ought to be kept unaltered by them : else they shall be chastised.”—“For such as have been separated by their father with equal, greater or less allotments of wealth, the same is a lawful distribution ; for the father is the lord of all.”—The meaning is that even in case of partition with the best and the like shares allotted by the father to the eldest and the like respectively, the others should not be dissatisfied ; nor should the eldest and others be so, in case of partition with equal allotments : accordingly Nārada says, that “that is a lawful distribution.”

Partition with the best and the like shares has been declared also by Manu thus,—“The twentieth part of the estate together with the best of all chattels, constitutes the specific deduction for the eldest ; half of that for the middlemost ; and a quarter, for the youngest.” Baudháyana has declared the case of equal shares, thus :—“‘Manu distributed the heritage among his sons ; hence the share of all is equal by reason of the absence of distinction.’” The meaning is, that all the sons shall have equal shares inasmuch as no distinction is mentioned in the Sruti, viz., “Manu distributed the heritage among his sons.”

10. If a father, by his own will, separates his sons with equal shares, then he must give to each of his wives a share equal to that of a son. Thus Yājñavalkya says :—“If he makes the allotments equal, then his wives to whom *woman's property* has not been given by the husband or father-in-law, shall be made equal sharers.”—To whom *woman's property* has not been given through affection &c., by the husband or the father-in-law: the mention of the husband &c. is illustrative; the meaning is, who are devoid of *woman's property* described hereafter. What is laid down is, that each of such wives is entitled only to a share equal to that of a son. Thus the following meaning is deduced :—When the father separates his sons even with the best and the like shares, then also after having deducted the best and the like shares he shall, out of the whole property from which the specific deductions have been made, allot to each of his wives a share equal to that of a son; but they are not entitled to specific deductions for their seniority.

Whatever, however, a wife is entitled to as her specific deduction, that too the wife gets; accordingly A'pastamba says :—“The furniture in the house and the jewels belong to the wife.”—“Furniture” means pots for eating and the like. What furniture of a woman is not joint property and what ornament is not so, will be considered hereafter.

Nor is it reasonable to say that when Vijnānesvara explains the above text (of Yogisvara) to intend that a wife is entitled to a share equal to that of a son in both the modes (of partition), then the condition consisting in the equality of shares, as ordained in the passage, “If he makes the allotments equal,”—is useless: this much only ought to have been said that the wives do not get specific deductions according to their seniority. Because a mode of mere unequal distribution without the specific deductions,—has been declared by Manu in the text,—“When the specific deductions have thus been made, let equal shares (of the residue) be allotted: but if the specific deductions be not made, then the distribution of shares among the sons shall be in this manner,—let the eldest have a double share; the next born, a share and a

half, and the younger sons each a share: this is the settled law,"—by Gautama in the text,—“Or the first-born may have a double share, and the rest one share each,”—by Vasishṭha, in the text,—“The partition of heritage among brothers is now declared: let the eldest take two shares, to him also belongs a tenth of the oxen and horses; the goats, the sheep and the house belongs to the youngest; the iron instruments and the furniture of the house belong to the middlemost,”—and by Nārada, in the text,—“To the eldest an additional share should be given; for the youngest the best share is ordained; the rest shall partake of equal shares and so the unmarried sister.”—If this mode be adopted, then in order to establish the absence of the wives' shares in that case, the restrictive rule, namely, “If he makes the allotments equal,”—has been ordained. Hence there is no defect.

Accordingly in interpreting the following text of Manu, viz.—“Among undivided brethren, if there be exertion in common, then the father shall on no account make unequal allotments,”—which prohibits the distribution of unequal shares, if in acquiring the property there has been “in common” *i. e.*, equal “exertion” *i. e.*, labour of all the brethren,—Jimútaváhana says:—But the specific deductions may certainly be given by the father, these do not partake of the nature of allotments; unequal allotments only being prohibited.

The following is the opinion of Vijnánayogin:—Hence also in a case of partition with specific deductions, as declared by Yājñavalkya in the text, “or the eldest with the best share,”—the sons certainly take equal shares; consequently to that case also, the above text (of Yājñavalkya) is applicable. But it does not apply to the case of partition with double shares &c.

But if *woman's property* has been given (to a wife,) in that case the allotment of a half share is subsequently ordained in the text,—“If any have been assigned, let him allot the half.” Although this has been ordained with reference to what the husband is to give to a wife who is superseded by the marriage of another wife, still by parity of reason it is to be applied to the present case where the question occurs (as to what should be allotted to a wife who

has received *woman's property*). For Baudháyana says:—“What is affirmed of even one among many that have a common property, the same is to be extended to all, since they are declared to be similar.”

Jímútaváhana and his follower the author of the *Dáyatattva* appear to explain the term “exertion in common” in the text of Manu, viz.,—“Among undivided brothers &c.”—to mean, if all ask for partition; for they say:—“But when the sons request partition in the father's lifetime, an unequal distribution should not be made by him.” But this interpretation is improper inasmuch as the term “in common” (*saha*) becomes unmeaning, and the term “exertion” (*utthánam*) although importing labor must be taken to signify, desire for partition; hence the interpretation put by us is to be preferred: thus we get also harmony with the following text of Yogísvara, viz.,—“When there is an augmentation of the common stock, then however, the distribution is ordained to be equal”: hence that text is reasonably construed by putting no other interpretation than what is approved by us.

It has been said in the *Mitákshará*:—“Again in the text,—‘If any have been assigned, let him allot the half,’—the term ‘half’ does not signify an exact equal division; hence so much should be given as what was given before and what is given now may be equal (to the share of a son).” The purport of which is this:—although the term *artha* (half), in the neuter gender, signifies equal division according to the *kosha* (vocabulary) which says,—“*ardha* in the neuter gender, implies equal division,”—still the intention is that a wife is entitled only to a share equal to that of a son, so that the share of a wife may not be unsettled, that is, sometimes greater than that of a son, and sometimes less; also that the restriction as to an exact half share may not have an ultra-mundane object.

With regard to this the author of the *Madanaratna* says:—“From the plural number in the term ‘wives,’ (in Yájñavalkya's text) it appears that the father himself is to take a share for each wife; but separate shares are not to be allotted to them; since that would be contrary to *Háríta's* text which ordains,—‘There can be no partition between husband and wife.’”

This is not tenable ; for partition between husband and wife is not affirmed here, so that there would be conflict with the text of Háríta, but (what is affirmed is) the gift to the wives, at the time of separating the sons, of shares equal to theirs, like the gift through affection ; for this reason it has been said that a half share shall be assigned if *woman's property* has been given. Hence there is no defect.

11. The partition, however, which takes place at the desire of the sons during the lifetime of the father,—must be equal ; because there is no provision for inequality (of distribution,) and because the term “equally” which occurs in the previous text is to be construed with the text of Manu (Nárada ?) viz.,—“When the mother is past child-bearing.”

So also the partition after the demise of the father must be equal ; for it is so declared by the term, “equally” in Manu’s text cited before ; also Háríta says, “When the father is dead, the division of the heritage shall be equal ;”—so Paithínasi declares,—“When the paternal property is to be divided, the shares of the brothers shall be equal” ; so also Yájñavalkya ordains,—“After the demise of the parents, the sons shall equally divide the heritage and the debts.”

This text (of Yájñavalkya) has been explained in the Mīṭāksharā, thus :—“After the demise of the parents,” indicates the period of partition, “the sons” shows the persons by whom partition is to be made, “equally” restricts the mode of partition.

If it be said that when Manu, after having premised partition after the demise of the father, and having ordained the alternative of joint abode to be preferable, in the following text,—“The eldest alone, however, may take the paternal estate in its entirety, and the rest may live under him as under a father,”—has also spoken of unequal division in the text,—“The specific deduction for the eldest is the twentieth part &c.” :—then how can the restriction, be obtained that the distribution shall be equal ? The answer is, although this unequal distribution is laid down by the Sāstras, whether the father be alive or dead ; still

the restriction,—that the distribution shall be but equal in this *kaliyugam* (age of discord,)—is to be maintained in pursuance of other texts ; for Yogísvara ordains,—“ But practise not what is abhorred in the world though it be legal, for it secures not spiritual good.”

Here the term “world,” means *yugam* (age); the meaning is, “what is abhorred” *i. e.*, prohibited to be practised in one age, although it may be legal in another age, ought not to be practised. Otherwise there would be the following defects:—it would be contradictory to say that the same thing is legal, and (at the same time) is one which secures not spiritual good ; the abhorrence of what is agreeable to the Sástras by one who is versed in them would be contradictory ; the abhorrence of mortals in ignorance of the Sástras does not, however, render anything incapable of affording spiritual good, because the same might extend to cruelty &c. in the ceremonies of *agnisoma* and the like. Accordingly, those only that are ordained to be shunned in the *kaliyugam*, such as the killing of cattle in honor of a venerable guest and the sacrifice of cows, have been set forth in the *Mitákshará* as examples of what are abhorred in the world.

Again wherever the re-marriage of an undefiled widow, and the like, have been mentioned under what are to be shunned in the *kaliyugam*, there have been also included the specific deductions for the eldest &c. ; thus in the *A'dipurána* it has been said,—“The re-marriage of a woman once married, the specific deduction for the eldest, the sacrifice of kine likewise, the intercourse with a brother's wife, and the use of a *kaman-dalu* ; these five shall not be done in the *kaliyugam*.” So also it has been said in the *Smritisangraha*,—“As neither the law of appointment to raise issue, nor the sacrifice of kine, so neither the partition with specific deductions, now exist.”—“The law of appointment to raise issue,” means, intercourse,—in the prescribed way, by appointment of venerable relatives,—with a brother's affianced bride if the brother dies, (before the completion of marriage) ; “the sacrifice of kine,” is as ordained in the text,—“Sacrifice a barren cow as a victim consecrated to Mitra and Varuna ;” “now,” means, in the *kaliyugam*.

Accordingly A'pastamba, having declared his own opinion,—“A father, in his lifetime, shall equally distribute the heritage among the sons;”—and having stated as the opinion of some, the taking of the entire estate by the eldest, in the text,—“Some (say that) the eldest is the heir;”—and having shewn, as the opinion of others, a distribution with specific deductions, in the text,—“In some countries, the gold, the kine, and the black produce of the earth belong to the eldest; the car appertains to the father; and the furniture in the house and ornaments are the wife's, as also wealth (received by her) from kinsmen;”—has refuted the same in the text,—“That is contrary to the Sástras;”—and has himself explained the inconsistency with the Sástras, in the text,—“No distinction is mentioned in the Sruti,—‘Manu distributed his heritage among his sons.’”

Hence unequal distribution, though ordained by the Sástras, ought not to be carried out in the *kali* age.

As for what has been said by the author of the *Mitákshará*, namely,—“it is also contrary to scripture;”—that is open to question. For if there be inconsistency with scripture, then unequal distribution could not be practised in other ages also (besides the *kali* age,) consequently the texts ordaining it would be altogether without authority; hence it is inconsistent to say that it is one which is to be shunned in the *kali* age. Neither is here direct conflict with scripture; for inasmuch as distinction is not ordained in the Sruti (cited above), therefore equality (of distribution) is inferred according to the maxim,—“Equality is the rule where no distinction is expressed.”

In the following passage of the *Smritichandriká*, however, there is written a different text of scripture, cited by Baudháyana, which ordains unequal distribution:—He himself has declared that there is a different text of scripture, bearing upon the specific deductions for seniority, “The eldest shall set apart one from every kind of property agreeably to the Sruti,—‘Therefore set the eldest son at ease with a property’;” by speaking of “one from every kind of property,” he indicates that the singular number in the term ‘a property,’ occurring in the Sruti, is significant; ‘set at ease,’ means satisfy.

Jimútaváhana and others, however, say that the equal or unequal distribution are determined respectively with reference to the consent or not (of the younger brothers,) in the passage :—"When there is the consent of the brothers by reason of great respect &c., (for the eldest) then there may be unequal distribution with specific deductions and the like : accordingly equal division alone is observed in the world, because persons of the present day (who are younger brothers) entertain no great respect (for their elders), also because elder brothers deserving of deducted allotments are now rare."—This is, however, not acceptable as it is inconsistent with the first half (of Yájnavalkya's text,) because in that case, the sons' desire alone would be the cause ; and the interpretation,—that the father's will constitutes another independent mode (of partition)—has, however, been previously shewn to be erroneous.

12. When the father distributes his self-acquired property amongst the sons, he shall himself take two shares. This has been declared by Nárada,—“The father while dividing his own property shall take two shares.” Also Vrihaspati says,—“If partition takes place in his lifetime, the father shall take two shares.”

It is said by Sankha and Likhita that the father takes two shares in case he has an only son ; thus,—“If he be the father of an only son, he shall allot two shares to himself.” The author of the Vyávahárapárijáta, however, has explained the above text, thus ;—Here the term “only” (*eka*) means, excellent ; accordingly if the son, being accomplished, is capable of acquiring wealth, then on separation with him, two shares shall be taken by the father.

Jimútaváhana, however, has explained the above text, thus ;—“The term *ekaputra* (rendered above into ‘the father of an only son’) signifies, the son of one father, i. e., the true (*aurasa*) son ; it is not a compound called *vahubrihi*, signifying, ‘the father of an only son’ ; for, as in a *vahubrihi* compound what is principally considered is an object different from what the constituent words of such a compound mean, it is not preferable to a *shashthitatpurusha* ; accordingly the wife's son (*kshetrāja*) is excluded by reason of his being the son of two fathers : hence a father being

a true son (of his own father) shall take two shares out of the estate of his own father, but not a father who is *kshetrāja* or the *wife's son*."

This is wrong, for in that case this text would refer to the estate of the grandfather; but it will be established that even a father who is a true son (of his father) is entitled to (no more than) a share equal to that of a son, because the father and the sons have equal right to the estate of the grandfather: accordingly here the *vahubrihi* compound is to be necessarily preferred.

The author of the *Mitāksharā*, however, has not noticed the above text at all.

Kātyāyana says,—“A father takes either a double share or a moiety by reason of his acquisition of both son and wealth; and a mother also, if the father be deceased, is entitled to a share equal to that of a son.”

(In commenting) on this text Jīmutavāhāna says:—“The term *putravittārjanāt* (rendered above into ‘by reason of his acquisition of both son and wealth’) means, from a son’s acquisition of wealth, i. e., the father is entitled to two shares of the wealth acquired even by a son, in the same manner as of his self-acquired property: but it does not signify, ‘by reason of the acquisition of both son and wealth;’ for it is admitted that when partition is made with brothers, then even one who has not got a son takes two shares as the gainer of the wealth; hence it must be affirmed (by the adversary to be the meaning of the above text) that if any relative exist who is entitled to participate, the acquirer takes two shares &c.; but if there be none, he takes the whole. But thus the specific mention of father and son would be unmeaning, like the singing of a drunkard. Besides acquisition is an act causing right of property, for it has been declared that ‘it is a contradiction to say that acquisition does not produce right of property’; but it has been shewn under the topic of the gift of whatever a man owns that there can be no such right over sons; hence the term acquisition would be metaphorical in regard to sons and literal in respect of wealth; but this two-fold meaning of a term once uttered is unreasonable. Nor can it be argued that the text would be superfluous, since the son’s right to a double share is obtained

from the fact of his being the acquirer, and since the father's right to two shares is also deducible from other texts, independently of the above text. For this text is not superfluous; since without this text there is no authority for holding that the father is entitled to two shares of his son's wealth."

This is not tenable; for the compound (*putravittarjanāt*), as explained by you, conveys a secondary meaning, depending at it does upon the genitive case to be imported, and as such, is less reasonable than the conjunctive form (maintained by us). As for the objection raised to the conjunctive form by the argument "for it is admitted &c."; that is extremely incongruous; for the text does not relate to participation &c. by brothers, the father's property being the subject dealt with. Nor can it be contended that the term *putra* "son" (in the above text) is useless, the acquisition of property alone being a sufficient cause for taking two shares. Because the term shews the absence of independence (in the son): the purport is, a son too being acquired by him like property is dependent, and as such can be no obstacle to the taking by the father, of two shares of his self-acquired property. As for the objection, "but this two-fold meaning &c."; that too is not good. For the father's right over the sons too is admitted. It cannot be said that this would be contradictory to what is said under the topic of the gift of whatever a man owns, the purport of what is said there being against such right of the father and others. Because the absence of the gift of sons &c. which is concluded in that topic, has been established by reason of conflict (of the gift of sons &c.) with what is shewn in the *Bhāshya*, to be the inducement (for giving away all that a man owns). It is for this reason that the provisions regarding the gift &c. of sons and daughters, bear only the primary meaning, they do not convey gift &c. that are secondary, such as making sons &c. dependents of others.

13. But the appropriation of two shares by a father relates to his self-acquired property; it has no reference to the property acquired by his father. For the father and the sons are entitled to equal shares of the grand-

father's estate, since their co-equal ownership therein has been ordained by Yājñavalkya in the following text,—“The ownership of father and son is, indeed, similar in the acquisitions of the grandfather, whether land, any settled income or moveables.”

And the meaning of this text is this:—“land,” signifies, rice-field and the like; “any settled income,” is what is given by reason of written grants by kings to the following effect,—“To such and such a person, so many betel-leaves or the like shall be given from such and such a plantation of betel leaves or orchard of betel-nuts;” “moveables,” are gold &c.; by the term “indeed,” it is indicated that the ownership of father and son in these is well-known, right accruing by birth alone; that again is “similar,” *i. e.*, co-equal: hence in respect of the grandfather's estate, the sons are not dependent on the father, as they are in respect of the father's self-acquired property; consequently partition (of the grandfather's estate) may be made (by the sons) even against the father's will, and the rule regarding the father's two shares does not obtain.

So Vrihaspati has declared,—“In the property acquired by the grandfather, whether immoveable or moveable, the parcenership of both father and son is ordained to be co-equal indeed.”

The author of the Madanaratna says:—The meaning is that the father shall take an equal share only, but not a double share as in the case of his self-acquired property, nor shall adopt the mode of unequal distribution.

On this, Jīmútavāhana says:—“Where of two brothers, one dies, while the father is alive, leaving a son, and the other brother survives and subsequently the father dies; in that case the son alone, by reason of his proximity, would have inherited the father's estate, but not the grandson whose father is previously deceased, by reason of his distance; in order to prevent this, it has been declared that ‘the ownership is similar;’ hence, as the father had ownership in the grandfather's estate, so his son too has: there is, however, no distinction by reason of greater or less propinquity, both being equally competent to offer oblations in the *pārvana* mode. This is the purport. Hence also a great-grandson whose father and grandfather

are dead is equally entitled to the estate of the great-grandfather, for there is no distinction as to the offering of oblations. But if the sons had ownership in the grandfather's property while the father is alive, then on partition by two brothers having sons, their sons too would have been entitled to shares by reason of their equal ownership. Hence the text (of Yājñavalkya) relates to a grandson whose father is dead and not to grandsons generally. Nor can it be said that such cannot be the purport of the text, as being not the subject premised. Because the case of grandsons by different fathers is the subject previously proposed. But what is intended to be shewn by the declaration of the similarity of ownership, is that there cannot be unequal distribution by the father at his will, as it can be in the case of self-acquired property. Thus Vishnu says :—' When a father separates his sons from himself, his will regulates the division of the wealth acquired by himself; but in the estate inherited from the grandfather, the ownership of father and son is co-equal.' Hence as regards self-acquired property, a father may separate his sons with unequal allotments; but in the grandfather's estate the ownership being co-equal, the father cannot act according to his pleasure. These texts being reasonably construed by this interpretation alone, the general rule,—that the father's desire constitutes the period of partition, and that the father is entitled to a double share,—is not affected (by them). Again, although it may be conceded, as is maintained by Dhāresvara, that the texts relate even to grandsons whose father is alive, still the object is no other than to prevent unequal distribution by the choice of the father; they do not however shew that partition may take place at the desire of the sons, nor that the father is not entitled to two shares. When, agreeably to the following text of Vrihaspati, viz.—' The eldest by birth, by science, and by good qualities shall obtain a double share of the heritage; and the rest shall share alike: for he is as a father to them,'—a father, who delivers his father from the lower regions and is the eldest by good qualities,—is, on partition with his brothers entitled to a double share as being like a father: then it is not proper on the part of yourself and the sages, to say

that the father himself, on partition with his sons does not obtain a double share of the estate inherited from the grandfather, although it is through him alone that the relation of the sons arises to the grandfather's property. Hence the rule that the father's desire constitutes the period for partition, as set forth in the text, 'He may separate his sons by his choice' and that the father is entitled to a double share, as is laid down in the text,— 'shall take two shares,'—is applicable also to the property inherited from the grandfather; but it is only the unequal distribution amongst the sons, that does not take place at his will. Nor can it be said that in the following text, viz.,— 'In the property acquired by the grandfather, whether immoveable or moveable the parcenership of both father and son is ordained to be equal indeed,'—the equality of the shares of father and son being clearly declared by Vrihaspati, how are two shares for the father obtained in this case too? Because the meaning is that 'the parcenership,' i. e., the act of one who distributes is 'equal,' that is to say, the father is not, however, entitled to make a distribution of greater and less shares at his choice: it does not imply that the shares must be alike. Or the declaration of equal parcenership may be taken to have reference to a father who is the son of two fathers, such as the *wife's son*, since it has been shown that the term *eka-putra* in the text,— 'If he be the father of an only son &c.,'—refers to one who is a true son."

This is not acceptable, being opposed to the context. Since after ordaining that among grandsons by different fathers the allotment of shares is according to the father,— it is declared,— "The ownership of father and son is, indeed, similar in the acquisitions of the grandfather whether land, any settled income, or moveables."—Now here three doubts arise, namely, whether, when the father is alive, the grandsons have no ownership in the grandfather's property, or there can be no partition, or partition can take place only by the choice of the father as in the case of his self-acquired property. Hence what the author of the *Mitāksharā* says, namely, that the latter text is ordained only with a view to remove these doubts,—is consistent with the proper mode of interpretation. Where-

fore should it be restricted to the case of grandsons whose father is dead? Nor, can it agreeably to what is maintained by Dhāresvara, be said, that the text is intended to prevent only unequal distribution by the choice of the father, and not the determination of the time for partition by the father's choice, nor his double share, which are without distinction applicable to this case. Because there is no ground of discrimination (as to what is the intention).—Moreover, the causality of the father's desire, is literal, being expressed by the instrumental case in the text, “may separate *by his choice* ;” but the determination, by the father's desire, of the time for partition, is only inferential: it is very strange that when the literal causality is prevented by this text, it does not prevent the determination (by the father's choice) of the time for partition—which is inferential. And if the ownership be admitted to be co-equal, as you have taken upon yourself the difficulty of admitting it,—then the causality of the son's desire, and the determination by it, of the time, cannot be opposed.

If it be said,—That the father is entitled to a double share by reason of his being the father and not by reason of his greater right, nor by reason of his being the acquirer; for (otherwise) that (*i. e.*, the acquirer's double share) being established by the general text of Vasishtha, namely,—“Whatever any one of them has himself acquired, he is certainly entitled to two shares” (of the same,)—the particular text,—viz.—“The father.....shall himself take two shares,”—would be useless; therefore in the same way as, by virtue of special texts, he is, by reason of his being the eldest son, entitled to two shares of the property acquired by his father, so likewise is the father, of the property inherited from the grandfather: hence in our opinion the father is entitled to a double share even of the property acquired by a son.

(The answer is,) true, but the text which ordains co-equality of right, and which is applicable without restriction, is against that (conclusion).

That the father is not entitled to a double share of the property acquired by a son, has been already established by impugning the meaning assigned by you, to the text

cited by you, namely, *putravittārjanāt*. Nor can it be said, that even if a double share cannot be deduced from that text, still the father's double share in the property acquired by a son, follows from the general text itself. For (in that case), the specification of the acquisition of the property as the reason thereof,—would become meaningless. Nor can it be argued that that part of the text which specifies the reason, is merely illustrative, otherwise there would be no use of this special text inasmuch as a double share by reason of acquisition is established by the very text of Vasishta. Since, as the double share of the son, by reason of his being the acquirer, is not prohibited in that text, therefore although the father be entitled to two shares by reason of his being the father, still the result would be the equality of shares; but the father's share does not become greater than the son's share, as you contend, for there is no express text to that effect.

As for the impropriety mentioned in the passage, "Moreover &c."; that is nothing. For there can be no question of propriety as to the equality ordained by a text of law: neither can impropriety be avoided by you, (for you say) the eldest is entitled to two shares by reason of his being the eldest, and the father is so entitled by reason of his being the father, hence follows the equality (of the father) with the eldest son.

14. It appears, however, from the following text of Kātyāyana, cited in the Madanaratna, that the participation of equal shares by all the brothers, and by the father and sons, is the preferable mode:—"When the parents and the brothers take in equal shares, all sorts of properties, such a partition is declared to be lawful."—Accordingly, Yogīśvara has employed the term "all" in the text, "or all may be equal sharers," otherwise he would have said "or shall make the sons equal sharers."

15. But with reference to a co-parcener who is capable of maintaining himself by his own exertion and does not wish to take a share of the paternal property &c., it is said by Manu:—"If any one of the brethren having a competence by his own exertion, feels no desire for the heri-

tage, he may be debarred from his share by giving him something in lieu of maintenance." So Yājñavalkya says:—"The separation of one who is able to support himself and is not desirous (of taking his share) is to be effected by giving him something."—"May be debarred," signifies, may be made to have no concern (with the property); the same is the meaning of the term "separation" (in Yājñavalkya's text); "by giving him something," means, by giving him anything, even a trifle, as a sign of partition: and this is to be done for the purpose of preventing his sons from claiming the inheritance.

Haláyudha, however, has in order to make the above text of Manu correspond with the following text of Nārada, viz.,—"He who being employed in the management of the affairs of the family, performs its business, is to be honored by the brethren with food, raiment and conveyance,"—assumed the reading *sa nirvātyas* and has explained the meaning to be,—his share is to be made up by the brethren who have taken their shares, by deducting wealth from the share of each. But this is to be rejected; because the term "feels no desire" would become meaningless, and because it is improper to assume a reading which is not noticed by the commentators such as Medhātithi; and because the other reading is consistent with the clear declaration (in Yājñavalkya's text) of "separation."

The author of the Prakāsa, however, has, even adopting the correct reading (*nirvāśyas*), explained the text of Manu in the following way:—"If any one of the co-sharers who are engaged in the acquisition of wealth, do not through negligence or laziness, 'feel desire' i. e., co-operate, i. e., render any assistance, although 'having competence,' i. e., capable of rendering assistance 'by his own exertion,' i. e., by his co-operation, he should be debarred from his share, i. e., from the wealth acquired by the others' own exertion, 'by giving him something in lieu of maintenance,' i. e., by allowing him to participate in the capital alone." This is not reasonable; because the term "although" (*api*) is to be imported, and because the meaning which is consistent with the text of Yogīsvara, does most clearly appear, and because the interpretation put by you depends upon a different text.

16. Kātyāyana says:—"When one himself dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage; he is to get, however, the paternal share from the uncle or uncle's son: the very same share shall equitably belong to all the brothers: or his son also shall get: afterwards cessation (of succession) takes place."

"One himself," signifies, a brother,—“his son,” the brother's son; “maintenance,” means share; the question occurring,—“what short of share is he to get?” it is said, “the paternal share;” “his son,” intends the great-grandson of the person whose estate is divided, because the case of a grandson is considered; “afterwards,” *i. e.*, after his son, “cessation” *i. e.*, cessation of succession takes place; the meaning is that the great-grandson's son is not entitled to any share.

Accordingly also Devala says:—"Partition of heritage among undivided parceners and second partition among divided parceners dwelling together, extends to the fourth in descent: this is the settled law."—The meaning is that partition of heritage extends to the fourth degree counting from the proprietor. This rule is alike applicable if divided coparceners dwell together after re-union, by reason of the expression “dwelling together.”

The term “the paternal share” being used by Kātyāyana, it is indicated that the allotment of shares is to be according to the fathers. Accordingly Yājñavalkya says:—"Among grandsons by different fathers the allotment of shares is according to the fathers."—The meaning is this:—The right by birth of grandsons to the estate of the grandfather is not distinguishable from that of the sons; hence although it is proper that the grandsons who are alike to the sons, should have a share equal to that of a son;—still their share being adjusted through their father, they are entitled to the shares of their fathers respectively; the participation, however in the grandfather's property is not with reference to themselves. What is intended is this:—If unseparated brothers die leaving sons, and the number of sons be unequal, one leaving two sons, and others three, four &c., the two shall take the share of their father by dividing

it into two ; the three, four &c. also shall take the share of their fathers by dividing the same into three, four &c. respectively : but the distribution of the grandfather's estate is not to be made according to the number of grandsons. In the same way when some of the brothers are alive, and the others die leaving sons, then the surviving brothers shall take their own shares, and the sons of the others shall take the shares of their fathers respectively : this distinction is based upon the authority of the texts. Hence this text indicating as it does, the case of similar co-heirs (*i. e.*, the case of grandsons only) is superfluous. Unequal distribution with specific deductions also is based upon the authority of texts. But equal participation which follows from the co-equality of ownership has been superfluously laid down by the texts.

17. Whatever property of the grandfather was lost by theft or the like, but has been recovered by the father, therein the grandsons participate, only by the choice of the father, in the same way as in the property acquired by the father. This has been declared by Manu,—“ But if a father recovers his paternal property, which was not recovered before, he shall not, if unwilling, share that property with his sons, (like what is) acquired by himself.”

The term “acquired by himself” is to be construed by supplying the term “like what is”; or it may be construed in this way,—because that property passed from the grandfather, and was recovered by him alone, hence it became as it were his self-acquired property; the term “if unwilling” shows that it is by the choice of the father alone and not by the choice of the sons, that partition takes place of such property although inherited from the grandfather.

Likewise there is another passage of law :—“ Whatever property of the grandfather was taken away, but has been recovered by the father by his own exertion, and whatever has been acquired by means of science heroism, &c., therein the father's ownership is ordained; he may at his pleasure, make a gift of it or allow partition to be made of such property; but in his absence, the sons are pronounced to be equal sharers.”

“Taken away,” *i. e.*, wrongfully taken possession of by strangers; the meaning is, that it was not recovered by the grandfather but was recovered by the father: the meaning of the expression “by his own exertion,” is, without the use of the grandfather’s property; but if it be recovered by means of the grandfather’s property, then the father obtains two shares on account of his being the acquirer by reason of the text of Vrihaspati, namely,—“Among these, he who acquires himself, shall get only two shares.” And this is to be construed also with what is acquired by means of science &c.; but this will be (hereafter) stated at length.

The substance of what is intended in the above text is this:—Although the ownership of the sons and the grandsons in the property of the father and the grandfather arises by birth alone, still by reason of the texts previously cited, the sons being dependent on the father, with respect to the father’s self-acquired property, and the father being entitled to superiority on account of his being the acquirer, the sons must give their assent to the disposal by the father of his self-acquired property excepting land and slaves, by reason of the previously cited text, namely,—“Immoveables and bipeds &c.” With respect to the grandfather’s property, however, there is also the power of forbidding (any disposal by the father); but with respect to property which was not recovered by the grandfather but has been recovered by the father, the sons are certainly dependent on the father’s will, although the property be the grandfather’s; but as regards gems, pearls &c., though inherited from the grandfather, the father alone has independence by reason of the previously cited texts, namely,—“The father is master of all the gems, pearls, and corals &c.”

18. Jimútaváhana says:—“When partition is made by the brothers after the demise of the father, then as regards the paternal estate too, it should take place after the demise of both the parents, since the demise of the father as well as of the mother is mentioned (in the text of Manu). The opinion of the author of the Sangraha, that the demise of the mother refers to the maternal

property is not, however, to be preferred; because there is no authority to support the supposition that the term 'paternal' is the result of the uni-residual conjunctive compound, signifying, belonging to the *parents*. And because, if this be taken to be a provision regarding partition of the mother's estate, then there would be tautology, since partition of the mother's estate has been subsequently declared (by Manu) in the text,—‘But when the mother is dead, let all the uterine brothers and the uterine sisters equally divide the maternal estate.’—Yājñavalkya also has, in the following text, namely,—‘Let sons divide equally the effects and the debts, after the death, of both parents: but daughters share the residue of their mother's property after payment of her debts; and the (male) issue, in default of daughters;’—declared the partition of the mother's estate in the passage, ‘but daughters &c.’ And the construction intended (of the first part of this text) is not that ‘Let sons divide the effects of both parents,’—but that ‘after the demise of both parents’: it is, however, by implication that the relation, namely,—‘the effects and debts of the father,’—is obtained, because in the latter part the partition of the mother's effects and debts has been mentioned. Accordingly in the previously cited text of Sankha and Likhita, namely,—‘Since the support of the family depends on the wealth, the sons are not independent when the father is alive, as also while the mother is so,’—the meaning expressed by the portion ‘as also while the mother is so,’—is, that the uterine brothers are not independent of the mother, and are not entitled to effect partition even while she is alive. Hence also in the text of Vyāsa, namely,—‘For brothers, a common abode is ordained so long as both the parents are alive: if separated after their demise, the religious merit of them increases,’—separation being prohibited by the injunction regarding the common abode, and partition being prohibited in the lifetime of the father and the mother, the association of their lives is not intended by the passage, ‘while the parents are alive’: hence if any one of the parents be living, partition is not lawful; but it is so, when both are gone to rest.

"Also in the text of Vrihaspati, namely,—‘On the demise of the parents, partition among brothers is allowed, and even while they are both living, it is right if the mother be past child-bearing,’—since partition during the lifetime of the mother who is past child-bearing, cannot be relative to the mother’s property, and since the very partition which is mentioned to take place after the demise of both parents, and which is referred to by the particle ‘even’ in the passage ‘even while they are both living’—is pronounced to be right; therefore it is ascertained that the partition among brothers after the death of the parents is relative to the father’s estate alone.

"Accordingly Vyāsa propounds that if partition takes place in the lifetime of the mothers, it is to be made according to the mothers:—‘If there be sons of one man, by different mothers, but equal in number and alike by class, a distribution among the mothers is approved.’—Likewise Vrihaspati ordains,—‘If there be many sprung from one, alike in number and class, but born of rival mothers, then according to law, partition should be made by them, by distribution amongst the mothers.’—Since there is not in reality any difference in the shares of (the different sets of) the half brothers, for they are equal in number and in class, hence the provision of allotment of shares to the mothers refers to the superiority of the mothers. And the purport is, that this is not a partition among the sons, but the partition is to be made avowing it to be one among the mothers. Therefore as in the mother’s property, so in this case also, the separation of the sons from each other is not lawful in the lifetime of the mother. Hence what is said by Gautama and other sages, namely,—‘In partition there is increase of religious merit,’—must be understood to refer to one after the demise of the mother."

This has already been refuted on the ground that some spiritual object will have to be assumed, if it be held that the mother’s death has reference to paternal property.

As for what has been said, namely,—that the term "paternal" has no reference to the mother’s property, because there is no authority for considering it to be the result of the uni-residual conjunctive compound, and because there would be tautology;—that again is unreasonable.

Because for fear of the objection of assuming some spiritual object it cannot but be admitted that the term is the result of the uni-residual conjunctive compound ; the objection of tautology, however, is not consistent with reason, for the injunction regarding the partition of maternal property may rightly be taken to be a repetition with a view to lay down particular rules.

As for the text of Yājñavalkya, the author of the *Mītāksharā* construes it thus, "Let the sons divide the effects of the father and the mother ;" he has removed the objection of tautology by introducing the latter half thus, "The sage states an exception in regard to the mother's separate property"; and he has,—after explaining the text, "and the issue succeeds on their default," thus, "In default of daughters, the issue, *i. e.*, the son and the like, shall take the mother's wealth after payment of debts,"—said,—“Although this is established by the first part of the text, namely,—‘Let the sons divide equally the effects and the debts, after the demise, of the parents,’—still it is again declared for the sake of greater perspicuity.”

Nor can it be argued that let this only be the construction here, namely, "after the demise of the parents ;" the terms "the effects and the debts" become by implication connected with "father's", since in the latter half, the partition of the mother's estate is ordained ; and thus the portion,—“the issue succeeds on their default”—does not become an useless repetition. Because, the terms "the effects and the debts" implying as they do, relation to some person, the question occurs who is that person. consequently the construction of these terms with the term "of the parents" which occurs in the same sentence—is preferable to the construction of these terms with the term "of the father", which is to be known by implication after the perusal of the whole verse ; and it is proper even to admit, as a consequence of such a construction, that the portion, "the issue succeeds on their default,"—is a mere repetition. According to the opinion of those, however, who explain the term "issue" to mean, the issue of the daughter, *i. e.*, the daughter's son,—there can be no fear whatever of that portion being a useless repetition. All this will be dwelt upon at length when the partition of *woman's property* will be discussed.

The absence of independence in the lifetime of the mother, as ordained by Sankha and Likhita, may certainly be reconciled by supposing it to be intended to extol the veneration due to the mother, or to refer to her property.

Also the text of Vyása, namely,—“For brothers &c.,”—merely lays down that during the joint lives of both the parents, the common abode is approved; neither is there any defect in considering that the association of their lives is intended by the phrase, “while both the parents are alive.” But, in fact, the joint abode is preferable also after the demise of the parents by reason of the text “The eldest alone shall take the entire property &c.,” and partition is calculated to increase religious merit, and religious duties such as the five great sacrifices must be performed even while the mother is alive, hence for the purpose of increasing it, partition is certainly proper.

As to what has been said, namely, “Also in the text of Vrihaspati,—‘On the demise of parents’ &c., since partition during the lifetime of the mother who is past child-bearing &c.,”—the answer is: By the first half (of the text) it is declared that the common abode is preferable while both parents are alive, and that partition takes place after their demise; therefore the meaning (of the latter half) is, that inasmuch as there is a possibility of the birth of other sons if the mother be not past child-bearing, and the dissipation of the means of their support is censured by the text,—“Those that are born and those that are not yet begotten &c.,”—but that it is not possible if the mother be past child-bearing, therefore partition is approved just as when the father’s affections become extinct: that being so, the mother being past child-bearing, there is no possibility of the birth of daughters who are entitled to her wealth (in preference to sons), therefore the sons may, by her choice, divide her wealth also; hence this text may relate also to maternal property. Therefore the objection is nothing.

As for what has been said in the texts of Vyása and Vrihaspati, namely, that partition by half brothers is to be made by a distribution amongst the mothers;—that is not against my opinion. Since, just as by virtue of the texts, like—“A person with his family shall not be independent

while the parents are alive,"—the dependence on the father and mother continues even after partition, so likewise by virtue of the above texts, (the half brothers) shall, as long as the mothers are alive, remain obedient to their orders, thinking the partition to be as between the mothers only. How from this can it follow, that there is no right to the partition of the paternal property while the mother is alive? There is no use in enlarging upon the subject.

19. As in the case of partition during the lifetime of the father, the father is to make his wives equal sharers with his sons, so also in the case of partition after his demise the sons are to make them partakers of shares equal to those of themselves: this has been ordained by Yājñavalkya,—“The mother also, of those effecting partition after the demise of the father, shall get an equal share.”—If *stridhanam* has not been given (to her): when it has been given, then it is ordained that a half share shall be allotted. Notwithstanding, the term “half” here does not signify a moiety (or equal division); but what is intended is, that so much shall be given which (together with her *stridhanam*) will make her an equal sharer with a son.

The term “mother” which signifies the parent does not include a step-mother also; for the term mother which has been once used (in the text) cannot reasonably convey two meanings one of which is primary and the other secondary.

From the following text of Vyāsa, namely,—“The father’s sonless wives, however, shall be made equal sharers; as also the paternal grandmothers, for they are declared to be equal to mothers;”—and from the use of the term “wives” in the text of Yōgīśvara (§ 10), it follows that, in partition during the lifetime of the father, all his wives without distinction are entitled to equal shares with the sons; for the terms “son” and “wife” convey meanings in correlation with “father,” hence there can be no objection of their bearing primary and secondary meanings. But in partition after the demise of the father, it is effected by the sons, and the term mother which appears to be used in correlation to them, cannot, by reason of the variableness in its meaning, imply a step-mother also; therefore, those

only who are mothers of sons, are entitled to shares equally with their own sons. But those who are sonless are entitled to food and raiment only, like the wives of coparceners who are undivided or re-united. And this is reasonable; since the father is independent in partition during his lifetime, and the sons are independent in partition after his demise; and since this appears to be the intention of the use of the term "mother" and the term "wife." It is also reasonable that those who are destitute of sons are entitled only to maintenance. This appears to be the intention of various commentaries.

That all the wives of the father, whether sonless or having sons, are entitled to shares equally with the sons, even in partition after the father's demise—appears to be the opinion of the learned author of the *Mitāksharā*; since he introduces the text of *Yājñavalkya*, namely "The mothers also of those effecting partition after the demise &c.,"—with these remarks:—"It has been ordained that the wives are entitled to shares equally with the sons in partition during the lifetime of the father, now the sage declares that the wives are entitled to shares equally with the sons in partition after the demise of the father."

Accordingly also the author of the *Madanaratna* says:—"The use of the term mother indicates also the sonless step-mothers, as also the paternal grandmothers, agreeably to the text of *Vyāsa*,—"The father's sonless wives &c.'"

The following seems to be the intention of the authors of the *Mitāksharā* and the *Madanaratna*:—And this is consistent with reason, since otherwise, in the phrase "father's wives," (in *Vyāsa*'s text) the use of the term father, the correlative of son,—would be useless. Had the participation of equal shares with the sons, referred to the partition in the lifetime of the father, then the term "mothers" would have been used instead of "the father's wives." Hence it follows that it is only in consequence of their being the wives of the father, that they get equal shares with the sons, whether the partition takes place in the lifetime of the father or after his demise.

But if the genitive case in the term "father's" (in *Vyāsa*'s text) be held to be used to denote the agent, then what is affirmed (in the text of *Vyāsa*) amounts to

this,—“The wives are equal sharers in partition made *by the father*,” and it follows by implication that the term “wives” stands in correlation with him; hence it is proper to say that this text relates only to partition in the lifetime of the father. But in Yājñavalkya’s text the term mother cannot properly refer to the parent as well as to the step-mother; and for its correlative the term sons occurs suggested by the term mother itself; therefore in order that the term mother may have its primary meaning it is proper that it should imply the parent alone. This is also the practice of the learned. This is here reasonable; this ought to be accepted: there is no use in dilating upon the matter.

Vrihaspati ordains:—“After his death, however, the mother (*janani*) or the daughter gets an equal share.” Here by the context the term “his” means, the father’s.

20. If at the time when the father is dead, any of the brothers be uninitiated, then after having performed their initiation at the charge of whole estate, the residue shall be divided according to shares. Thus Yājñavalkya says:—“The uninitiated ought to be initiated by the brothers who have been previously initiated.”—From the mention of the term “by the brothers,” it appears that “the uninitiated” brothers are intended. The mere provision that they ought to be initiated, having no concern with the subject of the Partition of Heritage, what is intended is,—at the charge of the whole estate. Accordingly Vyāsa says:—“Those, however, among them, that are uninitiated shall be initiated by the elder brothers, out of the patrimony; so also the maiden daughters according to law.”

Nārada declares the necessity of the initiation of the uninitiated, although no wealth of the father exists, thus:—“If no wealth of the father exists, the initiation must, without fail, be made by brothers already initiated contributing funds out of their own shares.”

21. The marriage of unmarried sisters also is necessary. If there be paternal property, then shares also are to be allotted to them. This is ordained by Yājñavalkya, —“The sisters also, giving (them) a fourth part from one’s own share.” The passage “uninitiated ought to be

initiated" (occurring in the previous text § 20) is to be construed with this text. Manu says:—"To the maiden daughters, however, let the brothers give separately from their own shares; (they) shall be degraded, if unwilling to give a fourth part from every one's share."

In the Ratnākara and the Chintāmaṇi it has been explained that, here the meaning of both the texts (of Manu and Yājñavalkya) is not that to each of the sisters is to be given by all the brothers a fourth part of every one's own allotted share; for in that case she who has many brothers would get much wealth, and a brother who has many sisters would be deprived of everything; therefore what is intended, is only the allotment of so much property as is sufficient for marriage. And in support of their view the following text of Viṣṇu is set forth:—"The marriage of the maiden daughters, however, shall be effected according to the estate."

This is not reasonable. Since it cannot properly be said that in neither of the texts the allotment of shares is intended; and since the sin for refusal to allot shares has been mentioned as distinguished from the sin for non-performance of marriage; otherwise, also the declaration of sin for refusal to give (shares) in the text,—“shall be degraded if unwilling to give,”—would have to be interpreted to intend sin for non-performance of marriage.

For this reason Medhātithi and the author of the Mitāksharā and others have explained the texts thus:—"The ablative case in the terms "from one's own share" (*nijādansāt*) and "from every one's share" (*svāt svādansāt*) is, however used in the stead of a participle understood; that being so, the meaning is *having-regard-to* that (i. e. "one's own share" and "every one's share.") Hence, to a maiden daughter shall be allotted a fourth part of such a share as is assignable to a son of the same class with her. Accordingly the following meaning is deduced: if the maiden be daughter of a Brāhmaṇi, her share is the quarter part of what will be stated hereafter to be the allotment for a son by a Brāhmaṇi wife; similarly also if the maiden be daughter of a Kshatriyā or the like. For instance if a Brāhmaṇi is the only wife of any person, and she has one son and one daughter; then dividing the whole paternal

property into two parts, and subdividing one such part into four shares, he shall give one such share to the sister, and himself take the residue. Similarly if there be two sons and one maiden daughter, then dividing the entire property into three parts, and sub-dividing one such part into four shares, one such share shall be given to the sister, and the remainder shall be divided by the two brothers, according to shares. But if there be one son and two maiden daughters, then dividing the property into three parts and subdividing one such part into four shares, and allotting two shares to the two maiden daughters, the rest shall be taken by him. Similarly when the brothers and sisters are of the same class, whether their number is equal (or unequal), it is to be understood that in all cases the sisters are entitled to get a quarter of the share assignable to a brother of the same class. But if there be one son by a Bráhmaṇi wife and one daughter by a Kshatriyá wife, then dividing the paternal property into seven parts and subdividing the three parts which would be the allotment for a son by a Kshatriyá wife into four shares, and giving one such share to the daughter of the Kshatriyá wife, the son of the Bráhmaṇi wife shall take the residue. But when there are two sons by the Bráhmaṇi wife and one daughter by the Kshatriyá wife, then the paternal estate is to be divided into eleven parts; and the three parts which would be assignable to a son by a Kshatriyá wife, must be subdivided into four shares; and giving one such share to the daughter of the Kshatriyá, the two sons of the Bráhmaṇi shall take the whole of the rest dividing the same. It must be similarly understood in any case of equal or unequal number of brothers and sisters dissimilar in caste.

Also Vishṇu says:—"Mothers are entitled to shares according to the shares of the sons; also the maiden daughters, according to the shares of the sons: as the sons are entitled to four shares, or three, or two, or one, according to the classes, so are the wives of the same class." Here by the passage "the maiden daughters are entitled to shares according to the shares of the sons,"—although it appears that the daughters are entitled to all the shares, namely four, &c. (equally with the sons of the same class;) still because Manu and Yogisvara have declared the allotment

(to them.) of a fourth part of a share in the passages "from one's own share," and "from every one's share," therefore the accordance with the shares of the sons is to be understood in that way only; but they are not entitled to shares equal to those of the brothers of the same class. Thus there is no conflict.

Vrihaspati distinctly says:—"The mothers, however, are equal sharers with them, and the maiden daughters are entitled to a quarter share." This is approved also by Kátyáyana, for he says:—"For unmarried daughters, a fourth share is intended, and for the sons, three shares: but equality is ordained if the property be small." The meaning, however, of the passage "but equality &c." is this:—if there be not paternal property even sufficient for marriage, then the daughters are entitled to shares equally with the sons.

Also the text of Vishṇu, namely, "The marriage of the maiden daughters, &c.," (para. 2)—is not opposed to the explanation given by Medhātithi and others. The marriage of the unmarried daughters of the father, *i. e.* of their own sisters shall be performed according to wealth. By this, only the necessity of marriage is ordained, but not the giving or not giving of shares.

The author of the Smṛitichandriká, however, has, in accordance with the following text of Devala, namely,—"And to the maiden daughters shall be given the father's wealth, (and) nuptial property"—held that property sufficient for marriage is to be allotted; his intention is that the qualifying term "nuptial" in the passage "nuptial property" would otherwise become meaningless.

What we say here is this. The passage "To the maiden daughters, shall be given paternal wealth," constitutes a distinct injunction; and that consists only of a fourth part, according to Manu and others. And the portion "nuptial property," forms a different injunction, being in accordance with the following text of Sankha;—"When the heritage is divided, a maiden daughter gets the ornaments and nuptial *stridhanam*." And this text of Sankha has been explained by the venerable Vidyáranya in his commentary on the Institutes of Parásara, thus:—"At the time of partition of the paternal estate, a maiden

daughter gets also the ornaments put on by her, as is declared by Sankha." But if the meaning (of the text of Devala) were that "the father's wealth" which is "nuptial" i. e. so much as is sufficient for marriage, shall be given to the maiden daughters; then the term "property" would be superfluous. Therefore it is reasonable to suppose that here are two distinct injunctions.

This text (of Devala,) however, is read by the author of the *Dáyatattva*, thus,—“To the maiden daughters shall be given nuptial property from the father's wealth.” It is to be observed that in this reading too, the explanation given by us deserves to be preferred, so that this text may have the same meaning with the text of Sankha; it does not however intend that property sufficient for marriage is to be given.

Now although, sometimes the term “sister” and sometimes the term “maiden daughter &c.” are used in the texts of *Manu* and others, still it is to be held that the subject being the partition by brothers, they convey the same meaning by interpreting the term “sister” to be used in correlation with the brothers, and the term “daughter,” in correlation with their father.

Hence in partition after the demise of the father, the (maiden) sisters are entitled to get shares out of the paternal property; and not that they are only to be disposed of in marriage. But if (partition takes place) previously (to the father's decease) they get only whatever the father gives, for there is no particular text regarding the point.

But *Jímútaváhana* says:—Since *Manu* and *Yájñavalkya* have respectively declared “let the brothers *give*” and “*giving* a fourth part,” therefore the sisters are not to take the fourth part, under the impression that they have a right thereto: certainly it is never said that let one brother *give* from his own share to another brother, what the latter has a right to get; similarly (is to be understood) also the giving of a fourth part. The brothers incur moral guilt, if they refuse to give; but the sister has no right to compel them.

This is not reasonable. For this conclusion does not follow from what is merely a variety of expression, just as in the texts,—“He may separate the sons by his choice” and “giving deductions to the eldest” and the like.

As for what he has said again, namely,—“ Since in the text of Nārada,—‘ Of those whose forms of initiation have not been regularly performed by the father, these ceremonies must be completed by the brothers out of the patrimony,’—the pronoun ‘ whose’ (*yeshām*) is used in the masculine gender ; and since immediately after this text, is commenced the following text,—‘ If no wealth of the father exists &c.,’ therefore the text refers only to the initiation of a brother. Hence, when there is paternal property then since the necessity of the sister’s marriage appears from the texts of Manu and other sages, therefore the intention is that only so much property as is sufficient for marriage shall be given.”

That is to be rejected ; for the necessity of the sister’s marriage appears from other texts. Thus in the text,—“ The father, the paternal grandfather, a brother, a kinsman (*sakulya*) the mother likewise ; on failure of the first among these the next in order who is of sane mind is the giver of a girl in marriage ; and omitting to dispose of the girl in marriage becomes guilty of causing miscarriage in every course” —Yogīśvara declares that a brother too failing to perform the ceremony of a sister’s marriage becomes guilty of causing miscarriage. Hence because the text of Nārada is also based upon the same foundation with Yogīśvara’s text, it is proper to admit that the terms “ whose” (*yeshām*) and “ of those” (*teshām*) are in the genitive case in the neuter gender, by reason of the rule that neuter gender is to be used when both the sexes are intended and by reason of the rule that a term is to be taken in its widest acceptance ; or that the terms are the results of the uni-residual conjunctive compound of dissimilar terms.

The author of the Madanaratna reads a text of Vrihaspati, thus,—“ The younger brothers, however, who may be uninitiated, shall be initiated by the elder ones out of the common paternal property”—intending that the term *yabiyasā* “ younger” (in later Sanskrit *yabiyāśas*) is used in the Vedic form ; and explains it thus,—the term “ brothers” is illustrative, it includes the sisters also.

Here again it is to be understood that the maiden daughters are intended by reason of association with

initiation, and because the adjective “unmarried” is mentioned in the text (of Kátyáyana),—“For unmarried daughters &c.”: hence the maiden sisters, alone get a quarter share, the others get some trifle out of propriety. This will be explained in detail while treating of the mother’s property.

22. Of immoveable property, whether ancestral or self-acquired, the father may make gift and the like only with the consent of the sons, by reason of the text previously cited, viz.,—“Immoveables and bipeds although acquired by a man himself, shall not be gifted away or sold without the consent of all the sons.” By the passage “although acquired by a man himself” it is *a fortiori* shewn that the consent of the sons is indispensable in (the disposal of) ancestral property. But in case of distress of the whole family, any member is competent, even without the consent of the rest, to make a sale, gift or the like (disposal) of immoveable property, since the support of the family is indispensably necessary, by reason of the following text,—“Even a single coparcener may make a gift, mortgage or sale of immoveable property at a time of danger, for a family purpose and especially for religious purposes.”—By “religious purposes” are intended, indispensable religious ceremonies such as the *śrāddha* of the father.

But a passage of law runs as follows:—“Separated or unseparated kinsmen are equal in respect of immoveable property; for in both cases one member is incompetent to make a gift, mortgage or sale;”—which is to be interpreted in this way. Although the incompetency without the consent of the others, is settled by reason of the co-equality of ownership, in joint property, of undivided coparceners, still the same is here particularly mentioned in respect of immoveable property for the purpose of extolling its worth. But as regards the separated coparceners, what is said in this text is for the purpose of facility of proof in case of dispute; for if, at a future time, the question arises whether the family is separated or undivided, then in that case, the fact of partition must be made out by the evidence of witnesses or the like; because

otherwise the gift or the like of joint property would be invalid. But if there be consent of the other co-sharers, the transaction is valid, independently of partition. Nor can it be said that let the ownership of even the separated coparceners be, as is ordained by this text, common in immoveable property. For then it would follow that partition (of immoveable property) takes place for some ultra-mundane purpose. Hence the validity of the gift or the like, as regards its essence, may be established even in the absence of the consent of the other co-sharers; and the determination of the dispute can take place on proof of partition. (The consent of the separated co-sharers is) like the consent of the village-men and the consent of the headman of the village, as in the text,—“Land passes by six formalities: by the consent of (the owner) himself, of the village-men, of kinsmen, of the headman of the village, and of heirs, and by gift of gold and water.” But the consent of the headman is also for the purpose of preventing boundary dispute. The consent of the kinsmen and the heirs, however, is to be explained in the very same way as is previously mentioned; accordingly there is another passage of law, viz.—“Acceptance shall be public especially of immoveable property.” Otherwise, gift or other alienation would be invalid for want of the consent of also the village-men and the headman of the village. The passage, “by gift of gold and water,” shows that since the sale of immoveable property is prohibited by the text,—“There can be no sale of immoveable property; mortgage may be made with the consent,”—and since gift is praised in the text,—“He who accepts land and he who gives it, they both are performers of a virtuous act and will certainly go to heaven”;—therefore when a sale is indispensable for the maintenance of the family and the like (necessity), the sale of immoveable property shall be made with the formalities of gift by giving gold and water to the purchasers, so that there may be even one element of gift.

But Jímútaváhana, after citing the two texts of Vyása namely,—“One parcener, shall not, without the consent of the others, make a gift or sale of the whole immoveable property common to the family; separated or unseparated

kinsmen are equal in respect of immoveable property; for in both cases a single member is incompetent to make a gift, mortgage or sale,"—says:—"These are not for establishing that one coparcener has no power to make a sale, gift or other transfer. Since as the proprietary right which is defined to consist in the power of disposal according to pleasure, exists without distinction in immoveable as in any other property, these texts cannot show the incompleteness of the relinquishment of right; for a fact cannot be altered by a hundred texts. But the prohibition is levelled against wicked persons, and is intended to show that an alienation is sinful if it is made to the injury of the family when there is no necessity for alienation such as distress of the family. Accordingly Nārada authorizes generally a sale or any other alienation:—'When there are many persons sprung from one man who have duties apart and transactions apart, and are separate in business and character, if they be not accordant in affairs, should they give or sell their own shares, they may do all that they please, for they are masters of their own wealth.' Since this text specifies the reason in the passage 'for they are masters of their own wealth,' it relates to immoveables also, for else it would be unmeaning."

This is all right, but that it is not reasonable to say that it is intended to show that an alienation is sinful. Since the sale of immoveable property even by all the co-sharers being prohibited in the absence of necessity, an objection would arise that the use of the term "a single member" is unmeaning; and since it is unreasonable to assume an ultra-mundane object in a rule of positive law, when there may be a visible object such as facility of proof in case of dispute: otherwise, even in case of the consent of co-sharers, the objection of injuring the family may arise; hence the texts would have to be interpreted as referring solely to sin in consequence of injuring the family, as is laid down in other texts.

23. Here again, partition at the desire of the sons, whether in the lifetime of the father or after his demise, may take place by the choice of a single co-parcener, since there is no distinction. Hence what, after premising par-

tion, is said by Kátyáyana, in the text,—“The wealth of those who have not attained to maturity and likewise of those who are absent in a distant place, shall be deposited, free from disbursement, with relatives and friends,”—is also in support of this view. Otherwise if partition could not take place without their consent, the declaration of the deposit of their wealth with relatives and friends would be unreasonable. So also Vishnú says:—“Likewise the wealth of a minor shall be preserved till he attains to majority.”

23a. This distribution among sons extends equally to them and to grandsons and great-grandsons in the male line. There is not here an order of succession following the order of proximity according to birth. For the three descendants, namely, the son, the grandson and the great-grandson are competent to offer oblations in the *parva* occasions. Hence it is that Devala says:—“A father, a grandfather and likewise a great-grandfather assiduously cherish a new-born son, as birds the holy fig-tree, (reflecting) he will present to us a funeral repast with honey, meat and herbs, with milk, and with sweet rice and milk in the season of rains and under the asterism Maghás.” Likewise Sankha, Likhita and Gautama says:—“A father, a grandfather and likewise a great-grandfather welcome a new-born son as birds the holy fig-tree, (reflecting) he will give us satisfaction with honey and meat and especially the flesh of the rhinoceros and with milk, and with sweet rice and milk in the season of rains and under the asterism Maghás.” Thus the competency being equal and the right by birth also being equal, equal participation would have followed but is prevented by the text,—“Among grandsons by different fathers the allotment of shares is according to the fathers.”

Jímútaváhana says:—“The grandsons and the great-grandsons whose fathers are alive cannot confer oblations in the *parva* occasions, they are not therefore entitled to the estate of their grandfather and great-grandfather respectively. If there be one son, and sons of another son (who is dead,) then one share appertains to the surviving son, and the other share goes to all the grandsons; for

their interest in the grandfather's wealth is founded on their relation by birth to their own father, consequently they have a right to just so much as should have been their father's share."

This, however, is not acceptable; because, it has been established that in the grandfather's property the grandsons also acquire ownership by birth; hence the equality of the grandsons' share (with a son's share) in the grandfather's property is based upon the authority of the texts, and not founded upon any equitable principle.

As for what he has further said, namely,—“Where one brother has left a large number of sons, and another a lesser number, there the text,—‘Among grandsons by different fathers &c.’—is intended to prevent equal distribution amongst all of them by reason of their being grandsons; but if the grandsons had ownership in the estate of the grandfather while the father is living, then in the case of partition by two brothers, one of whom has sons and the other has none, the sons also of that brother would have been entitled to share by reason of the co-equality of right.”

That has already been refuted before. By this again is removed also the above-mentioned incongruity. Hence is refuted also the objection that when there are uncles and nephews, then because the property belonged to the father of the uncles, therefore the nephews would get no share by reason of the absence of their ownership.

As for what has been said, namely,—“The grandsons and the great-grandsons whose fathers are alive &c.”—that too is wrong. For the capacity for presenting funeral oblations is not alone the criterion of the right to heritage, since the younger brothers are entitled to the heritage although they are not competent to offer oblations while there is the eldest brother. And the fitness for presenting oblations, (which the younger brothers have) is not wanting in grandsons too (while their father is alive). But when there are many claimants to the heritage, amongst the gentiles (*gotrajas*,) and the like, then the fact of conferring benefits on the proprietor of the wealth by means of the offering of oblations and the like,—only excludes those that do not confer (such) benefit: it is not, however, the criterion here.

24. Whether partition is made in the lifetime of the father or after his demise, if the pregnancy of any of the father's wives or of any of a brother's wives, be evident, then partition ought to be postponed till parturition, by reason of the following text of Vasishttha,—“Now, the partition of heritage amongst brothers takes place after the delivery of sons by those women who are childless (but pregnant)”. From the passage “after the delivery of sons” it appears that the postponement is to be made if their pregnancy is evident, but not if it is not evident.

Hence it is that Yogisvara has declared the mode of participation by one who is born subsequently to partition;—“One who is begotten by one of equal class, after the co-parceners have been separated, is taker of the share.” When the co-parceners have been separated during the lifetime of the parents, whether by the desire of the father or by the desire of the sons, one who is subsequently brought forth by a wife of equal class is taker of the share: “is taker of the share,” means, gets the share allotted to the parents. The meaning is, that after the parents, he alone gets their share: the distinction is, that he gets the mother's share if there be no daughters. From the adjective “one of equal class,” (*savarnāyām*) it appears that one who is begotten, however, by a wife of a different class, gets only his proper share from the father's wealth, and the entire share of his mother should there be no daughter. For this very reason, a son begotten by a wife of an unequal class after partition, gets only the share proper to his class, although the partition took place during the lifetime of the father: it must not be concluded that he is entitled to obtain all that belong to the father.

With this very intention, Manu says:—“But he who is born after partition shall get only the paternal wealth.” He shall get “the paternal wealth,” i. e. the wealth belonging to both the parents in the manner mentioned above; the term “only” shows that the brothers are not to make him participant of a share equal to their own, by deducting from their own shares. Also Gautama says:—“One born after partition (shall get) the paternal (share) only.”

But those who have been separated during the lifetime of the father, not knowing at the time that the mother

or her co-wife was with child, shall make the brother, born subsequently to partition, participant of a share equal to their own by deducting from their own shares. Thus Vishnu says:—"To one born after partition, his share shall be given by those who have been separated with the father." And it is the father alone who, by taking that share of the new-born son, given by the brothers, shall maintain him; by reason of his having a preferable right thereto, and by reason of the previously cited text, namely, "The wealth of those who have not attained to maturity, &c." (§. 23.)

Also the text, namely,—“One born before has no claim in the allotment of the parents; nor one begotten after partition, in that of a brother”—refers to this very subject. The meaning is, one born before partition, and (consequently) who has received his share of the paternal property, has no claim, *i. e.*, has no ownership in the allotment of the parents; and one begotten after partition has no claim in the share of a brother who has previously been separated.

And also what is acquired by the father, after partition, belongs only to the son born after partition, by reason of the following text of Vrihaspati;—"Whatever is acquired by the father himself who has been separated with his sons; all that belongs to the son born after partition; therein the sons born before have no claim; as in the wealth, so in the debts likewise, and in gifts, mortgages and purchases. They have no claims on each other, except for acts of mourning, and libations of water." He also says;—"The younger brothers of those who have made a partition with the father, whether children of the same or of a different mother, shall however take the paternal allotment." The reason here is the same as is declared in the text,—“One born before has no claim, &c.”

But if some of the sons have been re-united with the father, then the after-born son is not entitled to the whole of the paternal property, but he shall participate with them. This is declared by Manu;—"Or he shall participate with those that are re-united with him." "Him," *i. e.*, the father.

If after the paternal property has been taken by the brothers, on partition after the demise of the father, a son is delivered by a wife of the father, whose pregnancy was not known at the time of partition; they shall make him participant of a share equal to theirs, out of their own shares as modified by income and expenditure. This is said by Yájñavalkya;—"Or his allotment must be made out of the visible estate corrected for income and expenditure."—"Visible estate," means what has been taken by the brothers. "Income," means monthly, daily and annual increment to the visible estate. "Expenditure," means the liquidation of the father's debts, and the expenses attending the initiation of brothers and sisters, for it must be made at the expense of the common property; it does not, however, include any expense that a brother had to incur, for that has no concern with it.—The meaning is, that out of the paternal property corrected for such income and expenditure, one born after partition shall get an equal share with those previously separated. What is said is this: including in the share of each of the co-sharers, the income arising therefrom, and subtracting the necessary common expenditure, and deducting a part from the remainder of every one's share, a (posthumous) son born after partition shall be made an equal sharer. The particle "or" signifies an alternative based on distinct circumstances, with reference to the first half of this text, namely,—“One who is begotten by one of equal class after the co-parceners have been separated is taker of the share,”—and the distinct circumstances (to which the first half is applicable) have already been set forth.

Haláyudha, however, after interpreting the term "out of the visible estate" to mean, from the perceptible property of the father, but not from what is concealed,—says that this alternative refers to a son born after partition, who is possessed of less good qualities than the separated brothers.

This is to be rejected. Since concealed property too, when discovered after partition, is liable to be divided in equal shares, and there is no authority to show the inapplicability of the above rule to this case; and since in supposing the above text to embody this restriction, there

would arise the objection of assuming some ultra-mundane purpose; and since the text becomes perfectly consistent by the interpretation put by Vijnānesvara.

25. The mode of partition among brothers dissimilar in class is declared by Yogísvara:—"The sons of a Bráhmaṇa, in the several classes, (*varṇasas*), have four shares or three or two or one; the sons of a Kshatriya have three shares or two or one; and the sons of a Vaiṣya have two shares or one."

In the text, namely,—“The wives of a Bráhmaṇa, a Kshatriya and a Vaiṣya may, as regards the classes, be three, two and one respectively; the wife of a Súdra is one of the same class,”—Yogísvara has declared that a Bráhmaṇa may have three wives belonging to the (inferior) classes, different from that of himself; (similarly) a Kshatriya two, and a Vaiṣya, one: and including one of the same class with them, a Bráhmaṇa may have four, a Kshatriya three, and a Vaiṣya two. If the enumeration referred to wives of similar as well as dissimilar tribes, then a wife of the Súdra class being excluded, the two of a Vaiṣya also, would be reduced to one of his own class; consequently the part “the wife of a Súdra is one of his own class” could not consistently be put in contradistinction to a Vaiṣya; hence this enumeration is intended to have reference to the wives of dissimilar classes. This text has been so explained by Vijnānayogin.

That being so, (the meaning of the text in the first para. is this:—) “The sons of a Bráhmaṇa” born of wives belonging to the Bráhmaṇa and other classes respectively; “in the several classes, (*varṇasas*)” *i. e.* according to the classes to which their mothers belong,—the affix *sas* (in *varṇasas*) shows that the term *varṇa* (class) is in the locative case and bears a distributive sense, agreeably to the grammatical rule,—“To a noun in the singular number, signifying quantity, the particle *sas* is affixed in a distributive sense:”—to those who are begotten by a Bráhmaṇa or the like father on a Kshatriyá or the like wife, is applied the term *jāti* (mixed class) such as that of Múrdhábhishikta, and *jāti* cannot possibly be comprised by the term class, therefore the meaning is, according to the classes to which the mothers belong; “have four shares or three or two or

one,"—what is said is, that the sons of a Bráhmaṇa, born of a mother of the same class, shall each get four shares; the sons of the same Bráhmaṇa born of a Kshatriyá mother, three shares each; the sons of the same person, born of a Vaisyá mother, two shares each; sons of the same person born of a Súdará mother one share each. The passage, "in the several tribes" is to be construed with every clause in the latter half of the text: that being so, the sons of a Kshatriya born of Kshatriyá and other mothers shall each respectively get three shares, or two, or one; the sons of a Vaisya born of Vaisyá and Súdará mothers shall each get two shares, or one respectively. A Súdara cannot have a wife of a different class, partition among his sons must be one among the sons of the same class,—which has been already mentioned.

Although the marriage of a Súdará woman by a twice-born person is much censured, and espousing a Súdará with the intent of having sons by her is on all hands prohibited, as in the text of Manu and Vishnu,—“Men of the twice-born classes, who, through infatuation, marry women of the lowest class, very soon degrade their family with their progeny to the state of a Súdara: according to Attri and the son of Utathya, he who marries a woman of the Súdara class, becomes degraded instantly; according to Saunaka, by the birth of a son; and according to Bhrigu, by having issue by her”—“by having issue by her,” means by having issue born of the Súdará wife alone;—and marriage of a Súdará woman by a Bráhmaṇa, however, is declared by them, to be more reprehensible than by a Kshatriya or Vaisya, thus,—“A Bráhmaṇa, if he takes a Súdará woman to his bed, becomes degraded, and by begetting a son on her, he loses his priestly rank too”;—Yogisvara also says,—“The marriage of Súdará wives by the twice-born persons, as has been declared (by other sages), is not approved by me, inasmuch as a person himself is born of her (in the shape of a son)”—and it may hence occur, that as there cannot be a son begotten by a Bráhmaṇa &c., on a Súdará wife, why has his allotment been declared?

Still, a marriage for the purpose of pleasure, and a marriage for the purpose of religion (*i. e.* for the purpose

of having sons) being secondary to each other, a son may be born of a married woman of the Súdrá class by reason of the relation of the purposes through the act (whereby any one of the purposes may be attained); consequently the declaration of his allotment is certainly reasonable, in the same way as the declaration of his caste (*jāti*) in the text,—“One born of a Súdrá mother (by a Bráhmaṇa father) is called a *nisháda* or *párasava*.” To this effect is the conclusion demonstrated in the Mitákshará on the book of Achára (or customary rites). Hence in the text,—“But for such as are impelled by love of pleasure the following may, in the order of the classes, be (wives of the twice-born) though not preferable,”—Manu by saying “by love of pleasure” and “not preferable” ordains that the marriage of a wife of the same class is preferable. Sankha and Likhita say,—“Wives must be espoused, women of the same class are preferable for all persons: this is the principal rule. The succedaneous mode is: (wives of) four (classes) are allowed to a Bráhmaṇa, in the direct order; (wives of) three (classes), to a Kshatriya; (wives of) two (classes), to a Vaisya; (wives of) one (class), to a Súdrá.” By the term “in the direct order,” the inferiority of the next in order is indicated.

But Manu has declared two modes of partition among sons of the four classes, thus,—“Let a Bráhmaṇa son take three shares; a son born of a Kshatriyá mother, two shares; a son born of a Vaisya mother, one share and a half; and a son of a Súdrá mother, one share: or by dividing into ten equal shares, the entire property of all descriptions, let a lawyer allot legal shares in the following manner: a Bráhmaṇa shall get four shares; a son of a Kshatriyá mother, three shares; a son of a Vaisyá mother, two shares; a son of a Súdrá mother, one share.”—Of these the latter mode corresponds with what is declared by Yogísvara (para. 1.) And these are to be reconciled, as having reference to the sons of the Kshatriyá mothers &c., according as they are possessed of good qualities or are not possessed of good qualities. Hence it is that if the son of a Bráhmaṇa, born of a Kshatriyá mother, be the eldest by birth and possessed of good qualities, he gets an equal share with a son of a Bráhmaṇi mother; again

if a son begotten on a Vaisyá mother by a Bráhmaṇa or a Kshatriya father, be of the same description, he takes an equal share with a son born of a Kshatriyá mother. This is declared by Vrihaspati,—“A son begotten on a Kshatriyá mother by a Bráhmaṇa father, if eldest by birth and possessed of good qualities, becomes equal sharer with a son of the Bráhmaṇa class; so likewise a son born of a Vaisyá mother.” Likewise Baudháyana says,—“If, between a son born of a wife of the same class, and a son born of a wife of the class next in order, the son born of a wife of the class next in order be possessed of good qualities, he shall take the share of the eldest; for one possessed of good qualities becomes the supporter of the rest.”—Since it has been generally laid down in this text that a son born of a wife of the class next in order takes, by reason of his good qualities and seniority, an equal share with a son of the next better class, therefore it is to be observed, though it is not mentioned by Vrihaspati, that a son begotten on a Súdará mother by a Vaisyá father, if, of the above character, gets an equal share with a son of the Vaisyá mother. The meaning of the portion,—“shall take the share of the eldest,” is only this,—shall take an equal share with a son of the next better class, by reason of this being consistent with the text of Vrihaspati, and by reason of the impropriety of taking a larger share than that of a son of a superior class.

When, however, a Bráhmaṇa has only one son born of a Súdará wife, then he shall get a third part of his property; the remaining two parts shall go to *sapindas*, in their default to the *sakulyas*, and in their default to him who performs the funeral obsequies: as is declared by Devala,—“If a *nisháda* be the only son of a Bráhmaṇa, he gets a third part; a *sapinda* or a *sakulya* or the giver of the oblations, takes the other two parts”,—“*nisháda*” means a son born of a Súdará mother by a Bráhmaṇa father.

But if a Súdara be the only son of a Kshatriya or a Vaisya, he gets a moiety, the other half is taken by those entitled to succeed to the property of a sonless man, in the same order. Accordingly Vishnu says,—“But when a Súdara is the only son of the twice-born he gets a moiety; the succession to the other moiety is the same as to the

property of a sonless man." By the term "twice-born" here, the Kshatriyas and the Vaisyas only are intended, because Devala has declared a distinct rule with regard to the Bráhmaṇas. "Only son" (*ekaputra*) is a compound of an adjective and noun.

But this rule (regarding a third and a moiety) has reference to a son by a Súdṛá wife, having good character and many good qualities; for else, this would be in conflict with the text of Manu, namely,—“But whether he has or has not sons by other wives, no more than a tenth part shall be given to his son by a Súdṛá wife,”—and,—“The son of a Bráhmaṇa, a Kshatriya or a Vaisya, by a wife of the Súdṛa class, shall not share the inheritance; whatever his father may give him, let that only be his property.”

Although this mode of partition is generally laid down, still it refers to property other than land acquired by means of acceptance (of gift); because participation of that by sons begotten by a Kshatriyá or the like wife, is prohibited. So Vrihaspati says,—“Land received by acceptance shall never be given to sons by a wife of the Kshatriya or the like class; even if their father gives it, the son by a Bráhmaṇa wife may, nevertheless, resume it after the father's death.”—Here the term “acceptance” being used, it is indicated that of lands acquired by means of purchase &c., they too shall have shares proper to their caste. Hence it is that, with regard to lands generally, Devala has laid down a separate prohibition levelled against a son by a Súdṛá wife.—“A son sprung from a Súdṛá mother and a twice-born father, is not entitled to a share of land; those born of wives of the same class shall take the whole of it: this is the settled law.”

But as for the text of Manu,—“The son of a Bráhmaṇa, a Kshatriyá, or a Vaisya, by a wife of the servile class, shall not share the heritage; whatever his father may give him, let that only be his property,”—that has been explained by the southern writers, to apply when there is property given by the father through affection. But the oriental commentators say that it refers to a son by an unmarried Súdṛá woman, destitute of good qualities. This is wrong; because it is not proper to discard the distinction men-

tioned in the latter part,—“whatever his father may give &c.,” and to assume a distinction between having and not having good qualities,—which is not mentioned (in the text); and because the share of a son by an unmarried Súdra woman will be stated (by Manu) when treating the subject of slaves. Hence the previous distinction only is right.

P A R T I I.

- § 1. Principal and subsidiary sons, described by Yájnavalkya.—2. The legitimate son.—3. The son of the appointed daughter.—4. The wife's son including the son of two fathers.—5. The secret-born son.—6. The maiden-born son.—7. The son of the twice-married woman.—8. The adopted son.—9. The purchased son.—10. The son made.—11. The self-given son.—12. The son received with a bride.—13. The deserted son.—14. The son by a Sudra woman.—15. The *aurasa* is the principal, the rest subsidiary.—16. Partition by these.—17. Partition by the legitimate son and the son of the appointed daughter.—18. Partition by the legitimate son and the adopted son &c.—19. The conflicting tests, dividing the twelve sons into two classes the first of whom are heirs to kinsmen, how reconciled.—20. All this is relative to the same class.—21. The son by a Sudra woman cannot get the whole property.—22. Of the son of a Sudra by a female slave.—23. Of the son of a twice-born by a female slave.

1. In order to show the law of partition among principal and subsidiary sons, their nature is ascertained. On this subject, Yájnavalkya says:—“The legitimate son (*aurasa*) is one born of a lawful wife. Similar to him is the son of an appointed daughter (*putrikásuta*). A son begotten on a wife by a kinsman (*sagotra*) or any other is the wife's son. One secretly begotten in the house is declared the secret-born son. The maiden-born son is one born of an unmarried daughter; and is considered as son of the maternal grandsire. A son begotten on a woman who has not been deflowered, or on one who has been deflowered, is called the son of a twice-married woman. He whom his father or mother gives for adoption is declared to be the son given. The son bought is one who was sold by them. The son made, is one adopted, by

one's self. One who gives himself is self-given. One received while yet in the womb is the son received with a bride. He, who is taken for adoption, having been forsaken by his parents, is the deserted son."

2. It is said in the *Mitákshará*:—"A woman of equal class, espoused in a lawful form of marriage, is 'a lawful wife'; one born of her is the legitimate (*aurasa*) son". But in fact it is not to be so understood; for it is contradictory to what (the author of the *Mitákshará*) himself has said, viz.,—"because the *múrdhābhishikta* and other mixed classes sprung from superior fathers and inferior mothers, are included under the term legitimate sons"; and since, if the sons born of women espoused in forms of marriage which are not strictly lawful for *Bráhmaṇas* and others respectively, were not legitimate sons, then notwithstanding such sons, others would take the heritage. Hence the term "of equal class" is to be held to be used (in the *Mitákshará*) for the purpose of indicating superiority. But what is mentioned in the text, namely—"One born of a lawful wife," constitutes the definition, which excludes the wife's son.

Accordingly *Manu* says:—"He, whom a man himself has begotten on his own wedded wife, is the legitimate and the principal son." *Vasishṭha* also says:—"Only twelve kinds of sons are mentioned by the ancients; the first is the legitimate son begotten by a man himself on his own wedded wife." Also *Vishṇu* says, "Now there are twelve kinds of sons, the first is the legitimate son, begotten by a man himself on his own wedded wife." Here in both the texts (of *Vasishṭha* and *Vishṇu*), the term "wedded" (*sanskritáyām*) is to be considered as an explanatory adjunct of the term "own wife" (*svakshetre*) for otherwise there would be repetition. *Devala* says:—"He, who is begotten by a man himself on his own wedded wife, is called the legitimate son, is the first in rank and the perpetuator of the father's lineage." *A'pastamba* says:—"The sons of one who in proper time meets a lawfully wedded wife of the same class; they have a religious connection and cannot be deprived of the property of the father and the mother." *Baudháyana* says:—"One

who is begotten by a man himself on a wedded woman of the same class is known as the legitimate son. Also it is declared (by the ancient sages):—You are born from every limb, you are sprung from the heart, you are one's self in the name of son, you, who are such, live for hundred years; the ancestors put on a garland of lotus, (in joy) when you were in the womb; just as a person himself is in this world, so you become born here (a part of him); a man himself is called by the name of *put-tra* on account of the benefits conferred upon the father and the mother; because you deliver from the lower regions called *put*, therefore you are named *put-tra*."

In the texts of A'pastamba and Baudháyana, the term "of the same class," is used with the intention of indicating superiority. Hence the mention of the mode of partition among the sons too, who are begotten on wives of dissimilar class, while dealing with legitimate sons, becomes consistent. The text of A'pastamba is read in the Ratnákara as—"of the same class, who had no previous (husband)"—and is explained thus: "who had no previous (*apúrvám*) i. e. who had no previous husband; the meaning is—one who was not even affianced to another; this is said by the author of the Prakása." In the Párijáta also it is said:—The term, "of the same class," here means that a woman of any twice-born class, is of the same class with a man of any twice-born class; and that a Súdra woman is of the same class with a Súdra.

It does not, however, imply that a Bráhmaṇi woman is equal in class to a Bráhmaṇa; a Kshatriyá to a Kshatriya and a Vaisiyá to a Vaisiyá: for if that were so, then the sons of Kshatriyá or other women espoused by a Bráhmaṇa or any other (of a superior class) would not be included under any of the twelve kinds of sons.

3. "The son of an appointed daughter (*puttrikasuta*) is similar to him" (i. e. the legitimate son). The same is described by Vasishtá,—"This damsel who has no brother, I will give unto thee, decked with ornaments: the son that may be born of her shall be my son." Also Manu says,—"He who has no son may appoint his daughter in this form to raise up issue for him: whatever child may

be born of her shall perform my obsequies. In this very mode Daksha himself, a creator of beings, appointed daughters for the purpose of multiplying his race. He, with a delighted heart, gave ten daughters to Dharma, thirteen to Kasyapa, and twenty-seven to the king Soma (moon) having received them with honor." Here it is laid down that a son, born of a daughter who is given in marriage with the express declaration of appointment, becomes the *putrika-puttra* of his maternal grandfather. That a son born of a daughter who is given in marriage without such express declaration, may be the *putrika-puttra*—is determined in the following passage of the *Mitāksharā* in the book of *A'chāra*:—"The epithet 'having brother' has been used to prevent the apprehension of the bride's appointment; by this it appears that a daughter may be appointed, though not declared to be so." Accordingly, also Gautama says:—"The sonless father shall give away the appointed daughter in marriage with the express agreement that the issue shall be mine. Some say that (even in the absence of any express agreement) a daughter becomes appointed by the mere intention of the father." It is said also in the *Brahmapurāṇa*:—"A daughter who has been appointed to raise issue by her sonless father, whether mentally or in the presence of the king, fire and kinsmen, or anywhere else, previously to conception; even if she has received fees (from the bridegroom) and is given to the bridegroom whether by the father (himself) or (by any other) when the father is dead,—is known as the appointed daughter. Such a daughter gets an equal share from the father's property." *Manu* says:—"A son of the appointed daughter shall offer the first oblation to his mother, the second to her father, and the third to the father's father."

Or the (compound) term *putrika-suta* (in *Yājñavalkya's* text § 1) may mean the appointed daughter as well as son, i. e. the appointed daughter herself is the substitute of a son. Our opinion is that although she is (like a son) sprung from the breast (*uras*), still being a daughter she is similar to (and not the same as) a legitimate (*aurasa*) son. But the author of the *Mitāksharā* says:—"She is declared to be similar to a legitimate son because (in a female child)

there are more of the mother's limbs, than of the father's limbs". So Vasishṭha says:—"The appointed daughter herself, is the second son."

4. The Dvyámushyáyana or the son of two fathers is as described by Yájnavalkya in the following text—"A son begotten by one who is without male issue, on the soil of another, under an appointment, becomes legally the heir and the giver of oblations to both." Although he is sprung from the breast (or *aurasa* son) of the owner of the seed, still being begotten on another's wife, he is certainly inferior to the *aurasa* or legitimate son. Hence it is that the sage himself has given the following definition of the *aurasa* or legitimate son:—"The *aurasa* or legitimate son is one born of a lawful wife," (§ 1.) And we also will explain the Dvyámushyáyana as falling under the description of the wife's son, since the distinctive feature of the wife's son is not wanting in him.

Also Manu says:—"When by a contract of work, the soil is given in consideration of the seed: the owner of the soil and the owner of the seed are found in the world to be sharers of that."—Just as in the world by a contract for cultivation—when one has land but has no seed such as paddy for sowing, and another has seed, but no land; and if they enter into a contract, *i. e.* an agreement, that mine is the seed and yours the land, let us cultivate by sowing that in this, and let the produce grown therein be ours, then it is observed that both become sharers of the crops thereof. Similarly also, in the case of the Dvyámushyáyana or the son of two fathers, if one sows his (virile) seed in the soil of another, by an agreement that let the son begotten on the soil be ours,—then the issue begotten thereon belongs to both. Such a son of the wife, belonging to two fathers is called the Dvyámushyáyana.

Yájnavalkya, in defining the Dvyámushyáyana, (para. 1) has said "begotten under appointment", therefore what is intended is that the husband's younger brother or any other *sapinda* can, only when appointed by her venerable protector, beget a son on the wife of a brother and the like, in the prescribed mode such as rubbing the body with clarified butter; otherwise sin would be incurred by

both. Accordingly Manu says:—"The husband's younger brother, or a *sapinda* or a *sagotra*, being appointed by the venerable protector, and rubbing his body with clarified butter, shall with the desire of begetting a son, have an interview with a sonless woman after catamenia: one born in this mode becomes the son of the wife of a person."

When, however, without the agreement that the produce is to belong to both, seed is sown in the soil of another by the husband's younger brother or the like, then that son belongs to the owner of the soil alone. This also is declared by Manu,—“Should there be no agreement that the produce is to belong to the owner of the soil as well as to the owner of the seed, then clearly the fruit belongs to the owner of the soil, for the soil is more important than the seed.”—Where without the agreement about the produce which is here the offspring, a child is begotten on the soil of another, that belongs to the owner of the soil alone. The meaning of the term “clearly” is that as in the world, if seed be sown in the land of another without any agreement with him, or if an elephant, a horse or the like belonging to one person causes a female of the same species belonging to another person to conceive, then in both cases, the fruit produced therein is seen to belong to the owner of the soil alone: and the reason for this is stated in the passage, “for the soil is more important than the seed;” the purport is that this is found in the case of cows, mares &c. Accordingly the meaning which follows is, that if there be an agreement, then only the wife's son becomes the son of two fathers or *Dvyámushyáyana*, by reason of the right of the owner of the seed; but the owner of the soil has right over the wife's son in both the cases, (*i. e.* whether there be an agreement or not). Hence it is that although *Yájnavalkya* has made no mention of the agreement with the owner of the seed, in the text,—“A son begotten by one without male issue &c.”—still that is to be understood since the text is based upon the same foundation with that of Manu. Accordingly in the text,—“A son begotten on a wife by a kinsman (*sagotra*) or any other,”—a comprehensive definition of the wife's son is given, irrespective of the agreement; otherwise there would have been repeti-

tion : "a kinsman (*sagotra*)" means, the husband's younger brother or a *sapinda* or the like : "any other," signifies one other than a *sagotra* ; this is the secondary alternative, for *Manu* says,— "or a *sapinda* or a *sagotra*."

The A'charyas say that appointment to raise issue is relative to an affianced woman only. Because raising up issue in pursuance of appointment is restricted by *Manu* to her case only, as in the text,— "When the husband dies after the verbal betrothal of a damsel, her husband's younger brother shall have intercourse with her in this mode." And because the appointment of a widow is rather prohibited ; since after setting forth the appointment of a widow in the text,— "On failure of issue, the desired offspring may be obtained by a woman duly authorized, from the husband's younger brother or a *sapinda* : but one who is appointed to raise issue on widow, shall, rubbing his body with clarified butter, and being silent, beget in night only one son and by no means a second,"— *Manu* himself forbids it in the following text,— "No widow should be authorized by regenerate men to beget children by other persons, for those that authorise her to conceive by other men, violate the primeval law : such appointment is nowhere mentioned in the Vedic texts on marriage ; neither is the re-marriage of widows mentioned in the law of marriage : this practice, fit only for brutes, and reprehended by learned regenerate men was introduced among men while *Vena* held the sovereign sway : he, ruling the whole earth, and eminent among the royal saints, gave rise to confusion of tribes, while his intellect was perverted by passion : since his time, the virtuous censure him who through delusion of mind authorizes a widow to have intercourse with another man for the sake of progeny."

Here it is to be remarked that the term "affianced" means a damsel who has been given in marriage by the person having the right to give, with the declaratory sentence,— "I give unto thee," and that the term "widow" signifies one who has been married with the connubial ceremony ending in the rite of going seven steps, but whose husband is subsequently dead. But the term "affianced" does not include one who has been betrothed

by a promise at an indefinite time before marriage, such as with the following declaratory sentence,—“I will give this damsel in marriage, in the presence of gods, the spiritual preceptor and the holy fire, to him (or thee) who is (or art) not destitute of any limb, or not impotent, not degraded and free from the ten defects.” Hence it is that the term “husband” has been used by Manu; the previous executory promise being no part of the marriage ceremony, the promisee’s status of husband does not arise thereby, consequently he cannot reasonably be referred to by the term “husband.” Although a person does not become the husband of even a damsel betrothed by a promise, inasmuch as like the status of wife, the status of husband, which consists in the sacred initiation and which is to be effected by the ceremony of marriage, can never arise before its completion; still in the commencement of the connubial ceremony the use of the term “husband,” the status whereof will be the effect of it, is not unreasonable, like the use of the word sacrificial fire before the commencement of the sacrifice by the sacrificer. Hence it is that among western, northern and the like people, if the promisee dies a little before the marriage of the betrothed damsel, her marriage with another person is allowed by the learned, who are not censured. Otherwise in the *kali* age when the appointment to raise issue is prohibited, if the re-marriage of those whose marriage is not consummated be also forbidden, it would be a very objectionable practice. Accordingly the meaning (of the text of Manu) is this,—When “the husband” *i. e.* person about whom the ceremony of marriage takes place whereby the status of husband is effected, “dies after the verbal betrothal,” *i. e.* after the gift has been made with the declaratory sentence. Nor can it be said that let the appointment of widows to raise issue be optional, inasmuch as it is prohibited after having been enjoined. Because option cannot reasonably be supposed with reference to a fact, for it is not reasonable to say that a person undertaking to procreate issue on a widow, under appointment, does or does not incur sin. And because the law of appointment to raise issue cannot apply to widows, as it is restricted to affianced damsels, by the text,—“When the husband

&c.” And because the injunction and the prohibition are not of equal force, inasmuch as those who give the authority are censured, as in speaking of the duties of women, unchastity has been declared to be the source of numerous faults, and as a life of austerity (led by the widows) has been highly praised. Accordingly in the text,—“Let her rather emaciate her body by (living upon) the pure flowers, roots and fruits; but let her not when the husband is dead, pronounce even the name of another man,”—Manu himself has prohibited the resorting to the protection of another man, for livelihood; and in the text,—“Longing for the unparalleled virtue of those having only one husband, shall continue till death, forgiving all injuries, observing strictly the rules and foregoing all sensual pleasure: many thousands of bachelor Vipras continuing in the order of the student have ascended the celestial regions without leaving any issue: like those life-long students, a chaste woman leading a life of austerities after the death of her husband goes to heaven though destitute of sons: a woman who being covetous for offspring proves faithless to her (deceased) husband, brings disgrace on herself in this world, and becomes excluded from the regions of her lord (in the next world,)”—he has forbidden with extreme censure the living with another man for progeny; and subsequently in the text,—“When the husband dies &c.”—he himself has declared the legality of appointment relative to an affianced damsel. Having mentioned, “in this mode,” he has declared other ceremonies, in the text,—“Having espoused her in due form, she being clad in a white robe, and pure in her conduct, let him privately approach her once after each course till delivery.” The pronoun “this” in the passage “in this mode” means the mode which has been mentioned before, *viz.* rubbing of the body with clarified butter, appointment by the venerable protector, &c.,—and includes what is stated in other Smritis. The term “husband’s younger brother” includes a *sapinda* and the like, in conformity with other texts. The term “husband” and the expression “after the verbal betrothal” have been already explained.

The following passage of the *Mitákshará*, namely,—
 “From this very text it appears that the person to whom the damsel is betrothed becomes her husband even without acceptance,”—must be taken as implying the meaning explained by us, since it has been shewn that the meaning which appears on the face of the passage, is erroneous. Accordingly there is the following passage further down,—
 “This espousal with the restrictions, namely, sprinkling the body with clarified butter &c. forms part of the intercourse to be had with the woman appointed to raise issue; but it does not secure for her the status of a wife of the husband’s younger brother. Hence the offspring begotten on her belongs to the owner of the soil, should there be no agreement; but if there be an agreement, it appertains to both by virtue of the agreement itself.”

Nárada says:—“The issue of the seed sown in another’s soil by the owner’s permission is considered as belonging to both the owner of the seed and the owner of the soil.” Sankha and Likhita say:—“According to Angirásas, the offspring belongs to him who espoused her with Vedic texts: but Usanás holds that the produce of the seed sown with an agreement between the owner of the seed and the owner of the soil belongs to both.” Kátyáyana ordains:—“When one raises produce with the consent of the owner of the soil; then both of them become here the sharers of the same, since the fruit could not come into existence in the absence of either.”

Háríta says:—“(If begotten) in the lifetime (of the husband) he is called the wife’s son, by reason of the absence of independence; but after the death, he is called the son of two fathers, by reason of the seed not being sown (by the husband): others say that soil bears not fruit without seed, nor does seed germinate without soil, hence both being necessary, the offspring belongs to both. Of these two fathers, he becomes first the offspring of the natural father. Let them offer two *pindas* in the (*nirvápa*) sacrifice in honor of the ancestors, or in one *pinda* declare the name of both (the fathers); let his son do the same when offering the second *pinda*, and his grandson when offering the third *pinda*. And let the remote descendants down to the seventh, pronounce the name of two while

offering *lepa* or divided oblations to the three ancestors entitled to the *lepa* or divided oblations."

The meaning of this text is :—If begotten "in the life-time" *i. e.* of the owner of the soil, he is, by some, called the wife's son, who belongs to the owner of the soil alone; the reason for this is,—“by reason of the absence of independence” *i. e.* of the wife: “but after the death,” *i. e.* of the owner of the soil; although the absence of independence is the same, by reason of the subsequently cited text of Manu, viz.—“A sonless woman keeping unsullied &c. ;”—still the son does not belong to the owner of the soil alone; and the reason for this is, “by reason of the seed being not sown” *i. e.* the owner of the soil must have given permission to the owner of the seed; “soil bears not fruit &c.” shows that what has been said is reasonable: “in the *nirvāpa*” which means that in which oblations are given, *i. e.* the sacrifice in honor of ancestors; there let the Dvyāmu-shyāyanas “offer” separately “two *pindas*” to two fathers, “or in one *pinda*, declare the name of both” the fathers; it is to be understood that in each of the *pindas* the names of two ancestors are to be declared; for Āpastamba ordains,—“If he be the son of two fathers, he shall offer each oblation to two ancestors”—*i. e.* by reason of the three ancestors being double; “the second,” *i. e.* in offering the second and the third oblations: “the three ancestors entitled to the *lepa*,” *i. e.* while offering divided oblations to them shall pronounce the names of two.

Also Nārada says:—“The sons of two fathers shall separately offer to the two (sets of ancestors) the *pindas* and libations of water; and shall likewise take a moiety of the property of the owner of the seed and of the owner of the soil.”—The term “moiety” indicates a share that is reasonable under the circumstances.

Baudhāyana says:—“The son of two fathers shall offer oblations (in this way); shall proclaim the names of both in each oblation; three oblations shall be offered to the six: he who does so, errs not.”—“The six” means the two fathers, the two grandfathers and the two great-grandfathers. He again says:—“The son begotten on the wife of a person deceased or impotent or diseased, by one duly authorized, is the wife's son; he is the son of two fathers,

belongs to two *gotras*, performs the funeral obsequies of both and takes their heritage."

Manu says:—"He who is begotten on the duly appointed wife of a man deceased or impotent or diseased is called the son of the wife."

Here in all cases where the owner of the soil is alive, but is incapable of begetting a son on account of disease &c., the appointment and the agreement may, according to the circumstances, be made by the venerable protectors and the husband also; but if he be dead, then by the venerable protectors alone.

Thus there are two descriptions of the *kshetraja* or wife's son: one has two fathers, and the other has the owner of the soil for his father.

5. "One secretly begotten in the house" by a gallant, and subsequently ascertained to be of the same class, is the secret-born son of the owner of the soil. Thus Manu says,—“When a son is begotten on one's wife, and it is not known who is its father, he is the secret-born in the house and belongs to him from whose soil he is sprung,” —“And it is not known &c.,” means, that although it is not known by what particular person he is procreated, still it must be held that it is known that he is begotten by a person of equal class, by reason of the following text of Yogisvara.—“This law is propounded by me in regard to sons equal by class.” This text will be explained hereafter.

6. “The maiden-born son is one born of an unmarried daughter,” begotten by a man of equal class, he “is considered as a son of the maternal grandsire:” that is, the son belongs to him, of whose daughter he is born. But one born of a married daughter becomes the secret-born son of the husband; as is said by Manu.—“When a maiden daughter secretly conceives a son in her father's house, that son sprung from the maiden daughter is called by the name of the maiden-born son and belongs to the husband.”—From these texts it appears that one begotten on an unmarried damsel residing at her father's house, by a gallant of equal class, is called a maiden-born son, and that he becomes son of the maternal grandfather.

But in conflict with this is the following passage of the Brahmapurāṇa cited in the Ratnākara,—“But one begotten in the father’s house, on a damsel who has not been given (in marriage), by a man of equal class is called the maiden-born son and becomes the son of him to whom she is given (in marriage);” also the following text of Nārada cited in the same book,—“The maiden-born son, also the son received with the bride, and he who is secretly born: their mother’s husband is to be known as their father; and they are pronounced to be heirs.” Here (*i. e.* in the passage of the Brahmapurāṇa) there is no conflict as to his being the maiden-born son, who is begotten on an unmarried damsel in her father’s house, by a man of equal class: but the conflict lies in the portion,—“and becomes the son of him to whom she is given in marriage;” also in what has been declared in the above text of Nārada, namely,—that the damsel’s husband becomes the father of the maiden-born son, of the son received with a bride, and of him who is secretly born; and in what Manu says, namely,—“and belongs to the husband:” since it is not said (in these texts) that he becomes a son of the maternal grandsire. As for the reconciliation made by the author of the Mitāksharā, namely,—“if begotten on a maiden daughter, he becomes the son of the maternal grandfather, and of the husband alone, if begotten on a married daughter,”—that is not satisfactory. For if that were so, then such a son could not be called a maiden-born son (*kānina*), being not begotten on an unmarried daughter, meant by the term maiden or *kanyā*. It cannot, however, be said that the term *kanyā* (maiden daughter) refers to any female child (whether married or unmarried). Since the definition (of the maiden-born son) would be unmeaning, inasmuch as it would not exclude the secret-born son, who is begotten by a daughter,—all women being daughters of some body. Again, the conflict with the passage of the Brahmapurāṇa is not got rid of (by this), for there the term—“who has not been given in marriage”—has been used. Accordingly also, it is difficult to reconcile the inconsistency with the text of Manu. The author of the Kalpataru, however, who has cited the texts contradictory to each other, has not at all reconciled the conflict, for like

a thoughtless man he makes no mention of the distinct cases to which the texts are applicable. Indeed, he having set forth many texts showing that the maiden-born son belongs to the maternal grandfather, has immediately cited the text of Nárada and the passage of the Brahmapuráṇa, which are in conflict with the above texts. There are cited the following text of Vasishtha,—“The maiden-born son is the fifth; he, whom an unmarried damsel begets through passion in her father’s house, is the maiden-born son, he becomes the maternal grandfather’s son: this is also declared (by the ancient sages),—‘If a sonless daughter begets a son in the house; in him the maternal grandfather has a son’s son, he shall offer *pinda* and take the property’”—likewise the following text of Nárada,—“The maiden-born son, whose father is unknown, and whose mother was senseless, shall offer *pinda* to the maternal grandfather and take his property”—and also the following text of Baudháyana,—“If one approaches a damsel who has not been espoused and who has not been given; the son begotten on her is the maiden-born son.”

We remove the difficulty thus: The texts which declare that the maiden-born son belongs to the maternal grandfather, are relative to a son begotten by a man of equal class on a damsel who has not in any way been given: and the texts which declare that such a son belongs to the husband, have reference to the son begotten by a man of equal class, on a damsel who has been declared to be given but who has not acquired the status of wife, which is effected by the marriage ceremony ending in the rite of going seven steps. The term, “who has not been given” in the text of Nárada (in the passage of the Brahmapuráṇa?), and the term “who has not been given,” in the text of Baudháyana mean, the ceremony of whose marriage has not been completed,—but they do not signify, who has not at all been given. And this is consistent with reason. By the declaration of the intention (to give the damsel in marriage), the destruction of the father’s right and the generation of the bridegroom’s right are commenced; and the father’s right not being wholly destroyed (just after the declaration of the intention) the term “maiden-born son” may reasonably be applied,

and there being the commencement of the bridegroom's right, the son may reasonably belong to him; but it is consistent with reason that when the father's right is complete (over the damsel), the son born of her becomes the son of the maternal grandfather. The same is also the meaning of the text of Manu (para. 1):—A damsel, who has been declared to be given, but whose marriage ceremony has not been completed, continues a maiden, because the status of the intended bridegroom's wife has not been acquired; a son sprung from such a maiden daughter is called by the name of the maiden-born son and belongs to the husband *i. e.* to the person by whom she is married: hence the phrase "in her father's house" is consistent as supporting this meaning, for immediately after the marriage she enters the husband's house. The passage of the Mitáksharā also (on this subject) bears the same meaning: "unmarried" *i. e.* whose marriage ceremony is not commenced, "married" *i. e.* whose marriage ceremony has commenced;—the past participle in the word "married" *úḍhá* is used in the sense that the act is commenced, but not in the sense that the act is completed. But if the marriage ceremony of a damsel has been completed, then a son procreated on her by a gallant of equal class, becomes the secret-born son: hence it is said,—“one begotten secretly in the house” *i. e.* born in the husband's house without his knowledge.

7. Twice married women are of two descriptions: the first is one who was not deflowered on her first marriage, and is espoused by another; and the second is one who has, previously to the marriage, been polluted by intercourse with the other sex. One born of such a woman is the son of the twice-married woman; hence it is declared (by Yajnavalkya § 1),—“begotten on a woman who has not been deflowered or on one who has been deflowered.” Manu says:—“If a woman who has been deserted by the husband or a widow begets (a son) by becoming, of their own accord, the wife of another person; he is called the son of the twice-married woman.” Kátyáyana says:—“When a woman having deserted a husband who is impotent or degraded, gets another husband;

a son born of her is the son of the twice-married woman, and it is clear that he belongs to his natural father." Vasishṭha and Viṣṇu say :—"The fourth is the son of the twice-married woman." His being the fourth is agreeably to the order stated by them.

8. He, whom the mother with her husband's assent or the father gives to another, becomes his adopted son ; thus Manu says :—"That son whom his mother or father affectionately gives with water, at a time of distress, and who is alike (by class) is known as the adopted son." By specifying "at a time of distress," it is indicated that the giver incurs sin in the absence of distress ; the mother and the father (may give) separately or jointly ; the term "with water," indicates the mode of gift and acceptance ; "alike" means equal in class ; "affectionately" (*pritiśan-yuktaṃ*) is an adverb.

An only son shall neither be given nor accepted. So Vasishṭha ordains,—“A person, produced from the virile seed and the uterine blood, is an effect whereof the mother and the father are the cause : the mother and the father are competent to give, to sell, or to abandon him. But let no one give or accept an only son, since he is to continue the line of the ancestors. Let not a woman, however, give or accept a son unless with the assent of her husband.”

Some say that the adoption of a son by a woman without the assent of her husband, being prohibited in this text, the son taken by a widow whose husband died without giving authority does not become an adopted son. This is not tenable ; since a sonless person has no access to heaven, and the procreation of a son is ordained to be necessary, therefore the permission which he was bound under the Śāstras to give, is not to be considered as wanting in such a case. Nor can it be said that thus the portion, namely, “unless with the assent of her husband”—would be useless, inasmuch as there is no case to be excluded, and as the authority which a person is bound under the Śāstras to give, is in all cases necessary (and so assumed as given). Because the prohibition is levelled against a woman who wishes to adopt a son for her own sake, when her husband who is desirous of having

moksha or freedom from the necessity of repeated deaths and births, or who has a son by another wife, cannot possibly give an authority to adopt. So it is declared,—“If one among all the wives of the same person be mother of a son, then all of them becomes, by that son, mothers of male issue: this is ordained by Manu.” The purpose for which a son is desired, namely, the performance of *śrāddha* &c. being served by the son of a co-wife, no son need be adopted by such a woman without the assent of her husband. The purport is, that in such a case, the object of both (the husband and the wife) is accomplished by that son; since he being the *aurasa*, is the principal son to the husband, while to the wife, he is a subsidiary son, like an adopted son; hence another son shall not be taken in adoption without the permission of the husband. But in reality the meaning of the part,—“unless with the assent of her husband,”—is, that while the husband is alive, a son shall not be adopted by the wife without the permission of the husband; because the following text,—“If among uterine brothers, one becomes father of a son, then all of them become by that son, fathers of male issue: this has been declared by Manu”—which is similar to the previous text,—(If one among all the wives &c.)—has been explained in the *Mitāksharā* and the *Smritichandrikā* to mean that when a brother's son is available for making a subsidiary son, such as an adopted son, any other shall not be made a substitutionary son.

But when the husband is dead, the assent of those only is necessary, on whom she is dependent. In this view, the object of the prohibition becomes reasonable. Therefore, although the husband be deceased without giving permission to adopt, still an adoption by the widow is not invalid. The reason also for putting the interpretation mentioned above on the two texts of Manu—has been set forth in the *Mitāksharā* itself, thus:—“Otherwise in the texts, namely,—‘The wife and the daughters also &c.’—and—‘The property of a woman without issue &c.’—which refer to the heirs who take the property of one destitute of issue,—the declaration of the succession of the brother's son and the step-son respectively, in default of the wife &c., and in default of the husband &c., would be

in conflict with the above texts." This will be dealt with in detail while explaining the texts.

Although there may be many sons, still the eldest shall not be given in adoption; for in the text,—“As soon as the eldest is born, a man becomes father of a son”—he is declared to be preferable in performing the duties of a son.

The reason being equal, the prohibition in respect of an only son and the eldest son, applies to the cases of the son bought, the son self-given, and the son made. Hence in the anecdote of Harischandra in the Bahbricha Bráhmaṇa, there is found a suggestion of the prohibition in respect of the eldest son in the case of the son bought:—“He, on taking the eldest son, said.”

The mode of accepting a son is propounded by Vasishṭha,—“A person being about to adopt a son shall take an unremote kinsman, or a near relation of a kinsman, having convened his kindred and announced his intention to the king, having performed the *homam* with recitation of the hymns denominated *vyákr̥iti* in the middle of the dwelling-house.” Here by the term “unremote kinsman” is intended, the exclusion of one who is remote by country and language. Similarly, in the cases of the son bought and the like, for the reason is the same. In the Kalpataru, however, the text is read as—*adūrabāndhavam asannikriṣṭam eva*, and is explained thus: *adūrabāndhavam*, (rendered above into an unremote kinsman), means, one whose maternal uncle &c. are near; *asannikriṣṭam*, means, one whose virtues and defects are unknown; *eva* means even. And he has written the following as the remaining portion of the text of Vasishṭha:—“But if a doubt arise, let him set apart like a Súdra one whose kindred are remote, for it is declared (in the Vedas), ‘many are saved by one,’”—and explained thus: ‘But if a doubt arise,’ *i. e.*, should a doubt with respect to his caste arise, on account of his kinsmen not being near, ‘let him set apart like a Súdra’ destitute of initiation: the intention is that even a Súdra may be a son adopted.

9. “A son bought is one who was sold by them,”—“by them,” *i. e.*, by the mother and the father: that is,

one given to another by the mother with the husband's assent, or by the father, on receipt of price; 'excepting an only son and the eldest son, at a time of distress,'—is also to be inserted (in the definition); he must be one of the same class, by reason of the concluding text,—“This law is propounded by me in regard to sons equal in class.” As for the text of Manu,—“He, who is purchased from the mother and the father to become a son, is the purchaser's son bought, whether similar or dissimilar,”—that is interpreted,—“whether similar or dissimilar” in good qualities, but not dissimilar in class, for there would be conflict with the text,—“This law is propounded; &c.” Also Baudháyana says,—“He, who being purchased from the mother and the father, or from either, is taken for progeny, is the son bought.”

10. “A son made is one” of an equal class, “who” having been induced by the show of money, field, &c., is asked—‘be you my son,’ and “is adopted by the man himself” who is desirous of having male issue; provided that he is destitute of the mother and the father, for if they be alive he cannot, by reason of his dependence on them, become another's son. Also Manu and Vishnu say,—“When one alike (in class), capable of discriminating between right and wrong and possessed of the virtues of a son, is adopted, he is to be known as the son made”;—“alike,” *i. e.*, alike in class, “is adopted” by the mother and the father jointly or separately.

11. “One who gives himself is self-given,” *i. e.*, one who himself has given himself to another, *i. e.*, one who comes of his own accord by saying, ‘I become your son,’ and is bereft of the mother and father, or is abandoned by them, is equal in class and is not degraded,—is called a self-given son. So Manu says,—“He, who being bereft of the mother and the father or abandoned (by them) without any cause, delivers himself to another, is pronounced his self-given son”;—“abandoned,” *i. e.*, by the mother and the father at a time of famine or the like, on account of inability to afford maintenance, &c., “without any cause” such as degradation,—that is to say, independent, (so that he can give himself),

12. "One received, while yet in the womb, is a son received with a bride," *i. e.*, one, who is in the womb, being begotten by a gallant of equal class in the unmarried state of a damsel, and is received or *vinna*,—*vinna* being the past participle of *vid*, to get,—when she is married in the pregnant state,—is called one received with a bride, and becomes the husband's son. So Manu says,—“When a pregnant damsel is espoused, whether known or not known (to be so), the child in the womb belongs to the husband and is called the son received with a bride.” Also Vishnu says,—“The seventh is the son received with a bride; he is the son of a damsel married when pregnant, and belongs to the husband.” “The seventh,” *i. e.*, with reference to the order in which the enumeration is made by the sage.

13. “He, who is taken for adoption, having been forsaken (by the parents), is a deserted son,” *i. e.*, one who is abandoned by the mother and the father, and is taken by a person desirous of having male issue,—becomes son of the taker, and is called a deserted son. These two must be alike in class. Likewise, Vishnu also says,—“The eleventh is the deserted son, belonging to him by whom he is taken, having been forsaken by the father and the mother.” Vasishṭha says,—“The fifth is the deserted son, who is taken, having been forsaken by the mother and the father.” “The eleventh” and “the fifth” place is agreeably to the order in which enumeration is made by the two sages respectively.

14. The son of a Súdra woman, however, who is called *párasava*, and is enumerated by Manu among the subsidiary sons, is not mentioned by Yájñavalkya; inasmuch as the sage lays down a restrictive rule in the shape of the conclusion contained in the text,—“This law is propounded by me in respect of sons equal in class,”—and as he can, by no means, be considered as equal in class. Hence, the sage speaks of such a son in the text,—“One begotten even on a female slave &c. (§ 22),” since a son of a twice-born by a Súdra woman, cannot succeed to his paternal property even in default of other sons.

This will be resumed. Likewise, Manu says,—“The son whom a Bráhmaṇa impelled by passion begets on a woman of the servile class, is a carcass though living and therefore called a *párasava*, (a living carcass).” Also Baudháyana says,—“A *párasava* is one begotten on a woman of the servile class by a person belonging to the first of the regenerate tribes, impelled by passion.”

15. Of these (twelve descriptions of sons,) those described after the *aurasa* or legitimate son are subsidiary sons, but the *aurasa* alone is the principal one. Accordingly Manu says,—“These eleven (kinds of sons,) beginning with the wife’s son, as have been described above, are declared by the wise substitutes of sons—for failure of the object.”—The term “for failure of the object,” *i. e.* for failure of the object of marriage &c.—forms the reason for substitution. But in the *Smritichandriká* it has been explained thus,—The wise, *i. e.* the sages apprehending, in default of the legitimate son, the extinction of the ceremonies of the *śráddha* and the like that might be performed by him, have declared the eleven substitutionary sons, as what should be adopted. Vrihaspati says,—“There are thirteen kinds of sons, that are described by Manu in the order of priority: of them the legitimate son perpetuates the lineage, the appointed daughter and the rest,”—this text has been explained by adding,—‘are declared as what should be made subsidiary sons.’ Vrihaspati declares,—“As in the absence of clarified butter, the linseed oil is declared by the virtuous, as the substitute, so are the eleven descriptions of sons; in the absence of the legitimate son and the appointed daughter.” In the *Brahmapurāṇa*, (it is said):—“The son given, the son self-given, the son made, as well also the son purchased, and the deserted son are always to be maintained: those that belong to a different *gotra* or family, present distinct oblations, and perpetuate a different lineage, become impure for three days on the occasions of birth and death, as well of those that give food and raiment as of those to whom the seed and the soil belong. The Vipras have rarely a *párasava* son of the servile Súdra class. But persons of the royal class, that is, labouring under a curse, and is gradually perishing, and

is always engaged in warfare, have sometimes these; if there be neither the legitimate son nor the appointed daughter, then they have eleven sons of different descriptions beginning with the wife's son, who, however, merely perpetuate the lineage; all of them perform like a slave, their *śrāddha* &c. on the specified occasions. The secret-born son, the maiden-born son, the son received with a pregnant bride, the wife's son and the son of the twice-married woman, these five, the wealthy Vaisyas may not have even for fear of punishment from the king; they may have all the rest. The Sūdras whose occupation is service, who depend upon others for livelihood, and whose person is under the control of others, can have no son anywhere; therefore of a male slave and a female slave, none but a slave can spring."

16. Having thus determined the nature of these sons, their right to heritage is now determined, on this Yogisvara says,—“In default of the preceding one among these, every succeeding one is the giver of the *pinda* and the taker of the heritage.” Inasmuch as a distributive sense is indicated by the term “every succeeding one,” the term “the preceding one,” also, is to be taken in a distributive sense.

17. When there are a legitimate son and the son of an appointed daughter, then agreeably to the above text it would follow that the son of the appointed daughter is not entitled to the heritage while there is the legitimate son, but Manu propounds an exception (to the above rule,) in the text,—“A daughter having been appointed, if a son be afterwards born, the division of heritage must in that case be equal; since a woman has no right to specific deductions for seniority.” Also Vrihaspati says,—“The legitimate son alone is pronounced to be the owner of the paternal property; an appointed daughter is declared to be equal to him; the other sons, however, are to be maintained.” Nor is it reasonable to say that if the son of the appointed daughter be born first—(in point of time) and subsequently the legitimate son be born, then because the son of the appointed daughter

is the eldest by birth and not a female, he is therefore entitled to specific deductions for seniority. Since he holds the status of a son's son, as is declared by Manu in the text,—“When a daughter, appointed or not appointed to raise issue, gives birth to a son begotten by a man of equal class; in that son, the maternal grandsire has a son's son; let him present oblations and take the heritage;”—“has a son's son,” since the appointed daughter is a (subsidiary) son, hence her son though a daughter's son is a son's son. And since it is nowhere declared that a son's son is entitled to a greater share (than a son) by reason of seniority. Nor can it be said that this is in conflict with the text,—“The son that will be born of her shall be my son,”—as it affirms sonship of the son of an appointed daughter. Because the above meaning being in conflict with Manu, this text must be explained as intending the term son in a secondary sense on account of his being the giver of oblations. As the term son is applied to an appointed daughter in a secondary sense she being not a male child, so also to the son begotten by an appointed daughter who is begotten by a man himself; since although he is male he is not begotten by the man himself, and since the term ‘son’ primarily signifies a male child begotten by a man himself.

18. Likewise it would follow from that (text of Yogisvara § 16), that other sons too are not entitled to any share, should there be the next preceding son; but an exception is ordained by Vasishṭha in the text,—“If a legitimate son be born after a son has been adopted, the son given is entitled to a quarter share.” Here the term “son given” is indicative of others also, such as a son bought, for they are equally adopted; accordingly Kātyāyana says,—“If a legitimate son be born, the rest of the sons are entitled to a quarter share provided they be *savarṇa* (of the same class); but if they be *asavarṇa* (of a different class) they are entitled to food and raiment only.” The meaning of the text of Kātyāyana is this: *savarṇa*, i. e. the wife's son, the son given &c., they are entitled to a quarter share when there is a legitimate son; *asavarṇa*, i. e. the maiden-born son, the secret-born son, the son received

with a pregnant bride and the son of the twice-married woman; these however, are not entitled even to a quarter share when there is a legitimate son, but are entitled to food and raiment. Accordingly Vishnu prohibits the participation of a quarter share by a maiden-born son and the like, if there be a legitimate son, in the text,—“But the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman are not preferable; they are not at all entitled to participate in the *pinda* and the heritage.” In default of the legitimate son &c., the maiden-born son &c., are certainly entitled to take the paternal property in its entirety, by reason of the text—“In default of the preceding one among these, every succeeding one &c.,” (§16.) As for the text of Manu, *viz.*,—“The legitimate son alone is the master of the paternal estate; but for the sake of humanity, he shall allow sufficient maintenance to the rest,”—that also is to be explained to prohibit the quarter share in case the son given and the like be inimical to the legitimate son and devoid of good qualities; and to refer to the maiden-born son &c., since they being declared (in the text of Kátyáyana) to be entitled to food and raiment only, this text should be taken to be based upon the same foundation.

Again Manu himself has declared that the wife's son is entitled to a fifth or sixth share,—“Let the legitimate son, when dividing the paternal heritage, allot to the wife's son a fifth or a sixth share out of the patrimony.” The distinction is, that a sixth share should be allotted to him, if there be both animosity (towards the legitimate son) and want of good qualities; and a fifth, if there be either of these defects. But the quarter share for the son of an appointed daughter, whom Manu has declared to be entitled to an equal share, and the third share for the wife's son who has been declared to be entitled to a fifth or sixth share,—as mentioned in the passage of the Brahmapurána, namely,—“The legitimate son though next born, is entitled to the entire patrimony; the wife's son takes a third share; and the son of the appointed daughter, a fourth,”—are to be considered to refer to a son of the appointed daughter who is utterly devoid of good qualities

and is of a different class, and to a son of the wife who is highly endowed with good qualities and friendly to the legitimate son.

In order to show that, in default of the legitimate son, the son given takes the entire estate, Manu has set about the text,—“But if the son given of a person be endowed with all good qualities, he shall certainly take the estate of that person,—though accepted from a different *gotra* or family,”—the particle ‘though’ signifies, and *a fortiori* if accepted from the same *gotra* or family. The very same sage has prohibited the taking by the son given of the property belonging to the natural father, in the text,—“A given son must not claim the family and the estate of the natural father: to him who gives away his son in adoption, the ambrosial *pinda* which follows the family and the estate is lost.” The *pinda* which the giver would have received from that son is lost to him; “ambrosial,” *i. e.* causing satisfaction to the manes of ancestors,—is the adjunct of *pinda*; “which follows the family and the estate,” embodies the reason.

The following text relative to the given son alone and showing his right to a quarter share when there is a legitimate son, is declared by Vasishṭha,—“If after he has been taken in adoption a legitimate son be born, the given son takes a quarter share.” A text of Kātyāyana has already been cited (para. 1) which is applicable also to the son bought and the like. That text is read in the Kalpataru,—“are entitled to a third share;” and if this reading be correct, then that text is to be explained to mean that the participation of a third share takes place in case the son given and the like are endowed with more good qualities than the legitimate son.

Manu himself has declared also the equal participation of the wife’s son with a legitimate son, in the texts,—“If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal; this is the settled law. The (wife’s son who is) inferior, cannot get in right of the superior; the father is superior on account of pro-creation, therefore (the wife’s son) shall legally take the aforesaid share. He, who protects the estate and the wife of a deceased brother,

shall, after generating a son to the brother, make over his estate to him. If there be a legitimate son and a wife's son entitled to the property of the same father, each shall take what belonged to his natural father, and not the other." The legitimate son being the subject commenced, although it seems that the equal participation of the wife's son is mentioned relatively to the legitimate son, still because the meaning that is suggested by the context cannot be adopted should there be conflict of texts, therefore it is to be understood that the above text means the participation of a share equal to that of the natural father. Hence in the subsequent passage the superiority of the natural father is set forth. Also by the text,—“he shall, after generating a son to the brother &c.”—it is declared that he shall give him the property of him to whom the wife's son belongs, *i. e.* such a son being the representative of the brother shall take a share equal to his.

Similarly are to be anyhow reconciled the texts of Vrihaspati and other sages, which declare greater or lesser shares for the wife's son &c. Thus Vrihaspati says, “The other five or six sons beginning with the wife's son are equal shares.” Háríta ordains,—“One about to distribute shall allot one-twenty-first to the maiden-born son, one-twentieth to the son of a twice-married woman, one-nineteenth to the son of two fathers, one-eighteenth to the wife's son, one-seventeenth to the son of an appointed daughter; and the rest shall be given to the legitimate son.” In the Brahmapurāṇa it is said, “A legitimate son though next born (or begotten on a woman of inferior class) takes the entire estate, the wife's son takes a third part, the son of an appointed daughter a fourth, the son made a fifth share, the secret-born son a sixth, the deserted son a seventh share, the maiden-born son an eighth share, the son received with a pregnant bride a ninth part, the son bought gets a tenth, the son of a twice-married woman, however, obtains the next, the self-given son a twelfth; but the son of a Súdra woman, a thirteenth part of the paternal property; a person of the same *gotra* or a virtuous student (shall take the remainder).” Here with every clause should be construed, ‘when there is a legitimate son,’ by reason of the text,—“In default of the preceding

one among these, every succeeding one &c.," (§16.) It has previously been shown (para. 2) to what case is applicable the first verse of the above passage, namely, "A legitimate son &c." The reconciliation of the others also is to be made as is proper according to the local customs or agreeable to a comparison of the qualities.

19. Manu has divided the sons into two sets of six, and declared that the first six are heirs (*dāyādas*) and kinsmen, and that the latter six are not heirs but kinsmen, as in the text,—“The legitimate son and the wife’s son also, the son given and the son made, the secret-born son and the deserted son, these six are heirs (*dāyādas*) and kinsmen: the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of a twice-married woman, the self-given son and the son of a Súdra woman, these six are not heirs but Kinsmen.” The meaning of this text is as follows:—In default of any near heir of the *sapindas* and the *samānodakas* of their father, the first six are entitled to their estate, but the latter six are not entitled to the same; but the division into those that are heirs (*dāyādas*) to the father and those that are not so, would not be reasonable, because the right of all the sons in default of the preceding one, to take the property of the father is equal, by reason of the text,—“In default of the preceding one among these &c.,” (§16); and because the text,—“Neither the brothers nor the parents but the sons take the estate of the father,”—which is declared after the text,—“The legitimate son alone is the master of the paternal property”—establishes that all the subsidiary sons are entitled to take the paternal property; and because the term *dāyāda* is mostly applied to heirs other than the son, in many texts such as,—“Shall compel even the *dāyādas* to give:” but the status of kinsman, *i. e.* the qualification of performing the ceremonies of offering libations of water &c., by reason of being *sapinda* or *samānodaka*, is common to both the sets of six.

But Háríta says,—“Six are kinsmen and heirs; the son begotten by a man himself on his chaste wife, the wife’s son, the son of the twice-married woman, the maiden-born son, the son of the appointed daughter, and one secretly

born in the house are kinsmen and heirs: the son given, the son bought, the deserted son, the son received with a pregnant bride, the son self-given and the son found by chance are not heirs of kinsmen.”—“The son begotten by a man himself on his chaste wife,” means the legitimate son; “the son found by chance” is one that is bereft of the mother, father &c., and is suddenly found by a person who, after satisfying him says,—‘be you my son,’ and so adopts him,—that is to say, the son made.

Now here the conflict with *Manu* is clear. Because by him, the maiden-born son and the son of the twice-married woman are enumerated among those that are not heirs to kinsmen; while by *Hārīta* among those that are kinsmen as well as heirs: again the son given, the son made and the deserted son are reversely enumerated. Hence the conflict is to be removed thus; their applicability is to be determined with reference to qualities such as equality in class, or with reference to local customs.

Baudhāyana, however, concurs with *Manu* in what he says (about this subject) in the text,—“The legitimate son, the son of the appointed daughter, the wife’s son, the son given, the son made, the secret-born son and the deserted son are pronounced to be heirs: the maiden-born son, the son received with a pregnant bride, the son bought, likewise the son of the twice-married woman, the self-given son and the son of a *Sūdra* woman are pronounced to be kinsmen.”

Devala, having described the legitimate son, the son of the appointed daughter, the wife’s son, the maiden-born son, the secret born son, the deserted son, the son received with a pregnant bride, the son of the twice-married woman, the son given, the self-given son, the son made and the son bought, says,—“These twelve sons are declared for the sake of issue: some are sprung from himself; some are sprung from another; some are acquired; and others become sons independent of any exertion. Of these, the first six are heirs to kinsmen, the latter six are so to the father alone: a distinction also among the sons according to the priority in the order of enumeration is ordained: all these sons indeed are considered entitled to take the heritage of one having no legiti-

mate son ; but should a legitimate son be subsequently born, they have no right on account of seniority : of these sons, those that are equal in class take a third share ; but those inferior in class, shall remain dependent upon him, receiving food and raiment.”—Of the sons enumerated, it is clear who are sprung from himself and so forth.

Nārada also says,—“The legitimate son, the wife’s son, the son of the appointed daughter, the maiden-born son, the son received with a pregnant bride, likewise the secret-born son, the son of the twice-married woman, the deserted son, the son given, the son bought, likewise the son made, and the self-given son ; these are pronounced to be the twelve descriptions of sons. Of these, six are kinsmen and heirs ; and six are not heirs but kinsmen. Each, according to the priority in order, is considered as superior ; and the next in order, as inferior. On the death of the father, they succeed to his estate according to their order : on default of the superior let the inferior take the estate.”

Manu says,—“On failure of the superior, the inferior in order is entitled to the heritage ; but if there be many equal, all become sharers of the estate.”

Vrihaspati says,—“The son given, the deserted son, the son bought, the son made and likewise the son of a Súdra woman ; all these when pure in class, are considered as sons of middle rank, entitled to the heritage : the wife’s son is censured by the virtuous, so likewise are the son of the twice-married woman, the maiden-born son, the son received with a pregnant bride and the secret-born son.”

Háríta says,—“The son of a Súdra woman, the self-given son, and the son purchased ; all these who are pronounced kinsmen are undoubtedly *kāṇḍapriṣṭha* ; there is no doubt that, inasmuch as he having left his own family joins a different family, therefore by reason of that misconduct he is called *kāṇḍapriṣṭha*.

Yama says,—“The son given at a time of distress, the self-given son and the son of a Vaishṇaví, all these three described by Manu are *kāṇḍapriṣṭha* ; since the family is called the *kāṇḍa*, and they left their previous family. But let him who is eldest remain in the family. He, who having left his own family, betakes himself to a different

family is considered as *kāṇḍapriśṭha* on account of that misconduct.”—In the *Kalpataru* it is said that *Vaiṣṇavī* means a *Sūdra* woman.

20. In the following text, *Yogisvara* lays down a restrictive rule in the shape of the conclusion of what has been said,—“This law propounded by me refers to sons equal in class.”—This law which is propounded by me in the text,—“In default of the preceding one among these, every succeeding one &c.,”—is to be understood to refer to the wife’s son &c., that belong to the same class with the father, and not to those of a different class. Of them the maiden-born son, the secret-born son, the son received with a pregnant bride and the son of the twice-married woman can be of the same class, through their natural father; for they themselves have not the distinctive feature of the pure and mixed classes. Since *Yogisvara* himself having discriminated the pure and mixed classes, says, “This law is declared to refer to married women.”

The sons sprung from a father of a superior class and a mother of an inferior class,—and belonging to the mixed classes such as the *Mūrdhābhishikta*, are included under the definition of the legitimate; hence the mode of partition by them has been declared by the text,—“The sons of a *Brāhmaṇa* have four shares or three or two or one according to the class &c.,” (Part 1, § 25, para. 1.) Consequently, it is on their default, that the wife’s son and the rest are entitled to the paternal estate.

21. The son of a *Sūdra* woman, however, although legitimate, is not entitled to take the entire paternal property, notwithstanding the default of other sons. Accordingly, *Manu* says,—“Whether one has a son or is destitute of a son, let him not, according to law, give more than a tenth to a son by a *Sūdra* woman.” Whether one has a son by a wife of equal class or destitute of sons by a wife of equal class; when he is dead let not his wife’s son &c., or any other heir give to a son by a *Sūdra* woman more than a tenth out of his property. From this text it appears that in default of a son by a wife of equal class, a son by a *Kshatriya* or a *Vaisya* wife, takes the entire paternal property. As for the right of a son by a

Súdra woman to take one share, declared by Yogisvara and other sages in texts like,—“The sons of a Bráhmāna, according to the class, take four shares, or three, or two, or one &c.,”—that is to be understood to refer to a Súdra woman’s son of a very good character; since, otherwise, there would be conflict with Manu. And the text of Manu, namely,—“A son of a Bráhmāna, a Kshatriya or a Vaisya, by a Súdra woman, is not entitled to take the heritage,”—has already been explained.

22. A special rule is propounded by Yājñavalkya with regard to the partition of the property of a Súdra, in the text,—“One begotten by a person of the servile class, even on a female slave takes a share by the choice (of the father); when the father is dead, let the brothers make him partaker of a half share: when there is no brother, let him take the whole, provided there be no daughter’s son.” A son begotten on a female slave by a Súdra obtains a share by the choice of the father: after the father’s death, however, let the brothers, *i. e.*, the sons by a Súdra woman lawfully wedded, make him, *i. e.*, the son of the female slave, partaker of a share equal to half of their own share. Here from the plural number (in brothers) it should not be erroneously concluded that every one must give half of his share; for if that were so, then one having many brothers would get a much larger portion of the property than they, and that would be very unreasonable: but the sons by a Súdra woman, each take a half share of what is allotted to a legitimate son; the singular number (him) and the plural number (brothers) indicate the class and the individual. But in default of a son by a lawfully wedded Súdra woman and of his sons &c., the son of a female slave, also, gets the entire property of the Súdra father; this appears to be the purport.

23. From the use of the term “a person of the servile class” (in Yājñavalkya’s text, § 22) it appears that one begotten by a twice-born person on a female slave, cannot, notwithstanding the desire of the father, get a share, or a half share after his death; the taking of his entire property is out of the question: but he is entitled only to maintenance, provided he be not disobedient.

CHAPTER III.

LAW OF SUCCESSION

TO THE ESTATE OF A PERSON SEPARATED AND NOT RE-UNITED.

PART I.

§ 1.—General rule of succession.—2. The wife's succession; wives of different classes; effect of marriage in different forms; her right to perform religious ceremonies, and to take the entire estate.—3. Limitation of her right; two texts of Kátyáyana, interpretation of these by the author of Smritichandriká; that by Jímútaváhana, stated and criticized; conclusion.—4. Other texts on the priority of the wife's succession.—5. Texts in conflict with these.—6. Reconciliation by Dháresvara.—7. Criticized.—8. Reconciliation by Srikara; criticized.—9. Another reconciliation; criticized.—10. Reconciliation by the author.—11. The term "sonless" in texts on succession explained; *sapinda* relationship explained.—12. Jímútaváhana's objection to the above reconciliation, stated at length.—13. The same criticized; re-union explained; chaste widows entitled to maintenance only when the husband is unseparated.

1. Now are mentioned those, who, in default of the principal and subsidiary sons, are entitled to take the estate of one who is deceased, degraded, gone to retirement or the like.

On this Yogísvara says,—“The wife (*patni*) and the daughters also, the parents, brothers likewise, their sons, the gentiles (*gotraja*), cognates (*bandhu*), a pupil, the fellow student: in the absence of the preceding one, every succeeding one is indeed heir to the estate of a sonless person, who departed for heaven. This rule extends to all classes.” The meaning is: The wife and the rest shall, agreeably to the order in which they are mentioned, *i. e.*, in the absence of each preceding one, the next succeeding one,—take the estate of a person who departed for heaven, *i. e.*, is deceased, and is sonless, *i. e.*, destitute of

the twelve kinds of sons previously described ; this rule is to be understood to apply to all, *i. e.*, the mixed classes whether they are sprung from a high-caste father and a low-caste mother, or from a low-caste father and a high-caste mother,—as well as to the (four principal) classes, such as the Bráhmaṇa.

2. First of all the *patni* or the lawfully wedded wife takes the estate. The term *patni* itself signifies a woman espoused in the prescribed form of marriage, agreeably to the Aphorism of Páṇini,—“The term *pati* (husband) is changed into *patni* (meaning the correlative) implying relation through a sacrifice.” The singular number (in the term *patni* in Yogísvara’s text, § 1) implies the class ; hence if a person leaves more wives than one, then all of them,—first those of the same class (with the husband) and after them those of a different class,—shall take the husband’s property dividing the same amongst themselves.

From the use of the term *patni* (in Yájñavalkya’s text, § 1) it appears that a wife espoused in the *ásura* or the like (disapproved) form of marriage has no right to take the property when there is another wife espoused in a lawful form of marriage. To this effect is the following passage of law,—“A woman, however, who is purchased by giving price, is not to be considered as a *patni* ; for neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors she (can be the companion of her husband, *i. e.*, the purchaser, when performing such a sacrifice) : the poets (prophets or sages) look upon her as a female slave.”—In this text her status of a female slave is mentioned with the intention that she has not the right of becoming the indispensable companion in the performance of ceremonies having spiritual merit for their end, but not with the intention that intercourse with her is forbidden ; for she being espoused (though in a disapproved form), the objection of her being the wife of another man, cannot arise. Accordingly Manu, having described the virtuous and the vicious forms of marriage, declares that the virtues and vices attach solely to the issue (of such marriages),—“If a wife is espoused by a man in the blameless forms of marriage, the offspring becomes unblameable ; and if in the

reprehensible forms, the progeny becomes reprehensible ; therefore the reprehensible forms should be studiously avoided." The reprehensibility of the offspring, again, refers to the absence of good conduct and character, not, however, to exclusion from the castes pure or mixed ; for the sole fact of being begotten on a married woman by the man who marries her, determines the caste pure or mixed (of the offspring,) by reason of the text,—“This law is ordained with regard to married women.” Hence, by the text,—“For neither in a sacrifice in honor of the gods, nor in one in honor of the departed ancestors *she* &c.”—the right to be the companion is prohibited.

Accordingly it is indicated by the term *patni* that the competency also, of performing the rites in honor of the ancestors, is a reason for the succession to the property of the husband. Hence Prajapati says that the estate of the husband may be taken only by a wife who is chaste and who is competent to associate with the husband in the performance of ceremonies enjoined in the Sruti and the Smriti, as in the text,—“Dying before the husband, a wife devoted to the husband partakes of his consecrated fire ; but if the husband die before her, she takes his property : this is the primeval law.” Also Vridhdha Manu says,—“The sonless wife (*patni*) alone, keeping unsullied the bed of her husband and persevering in religious observances, shall offer oblations to him and take his entire share.” With reference to this text, the author of the Smritichandrikā says, that since the order of reading of the latter half, is opposed by the order indicated by the sense, therefore the widow first obtains his entire share and then presents oblations. This is to be rejected. Because nothing is intended to be expressed by the order : the sole object of the text is to establish her right to both. Otherwise the funeral ceremonies would have to be postponed till the share be obtained : but that is prohibited in various passages of law. Also because there would arise the objection of assuming some spiritual purpose. By the particle “alone” in the term “the wife alone,” it is shown that even to the performance of the funeral ceremonies of her sonless husband, she alone, like a son (had there been one) of her sonless husband, is entitled, notwithstanding a brother and

the rest enumerated in the text,—“The wife and the daughters also &c.”

The very same meaning is expressed at length by Prajāpati,—“Having taken his moveable and immoveable property, the precious and the base metals, the grains, the liquids, and the clothes, let her duly offer his monthly, half yearly and other funeral oblations. With funeral repast and by pious liberality, let her honor the paternal uncle of her husband, the spiritual preceptor (or the parents) and daughter's sons, the children of the sisters, the maternal uncle, and also decrepit persons, guests and females (or the other wives of inferior status).”—“The base metals” are lead, tin and the like (*i. e.* other than gold and silver;) “funeral repast” signifies the food intended for the ancestors; “pious liberality” means reservoir of water and the like (works for public good) or the fees and the like (given to Bráhmaṇas) for the performance of a ceremony. What is intended is this: Having obtained the husband's entire estate including even the immoveables, the *patnī* should, under the superintendence of the husband's relatives, perform the ceremonies conducive to the spiritual benefit of her husband and herself, (the ceremonies) which can be accomplished by wealth and which a female is competent to perform.

The same sage declares that those that cause injury to her who conducts herself in this way are to be punished as robbers,—“The gentiles and the cognates, however, who become her adversaries or injure her property, let the king chastise by inflicting on them the punishment of a robber.”

The following passage prohibitory of the taking by the *patnī* of immoveable property, is quoted in the Smṛitichandrikā as a text of Vrihaspati;—“When the husband is separated, the pledge and various others that are recognised as property, the wife (*jáyá*), after the death of her husband, obtains, excepting the immoveable.”—And in order to prevent the inconsistency of this text with that of Prajāpati, namely,—“Having taken his moveable and immoveable &c.”—it is concluded that this refers to a wife destitute of daughters, by rejecting the opinion of others, namely, that this passage refers either to a wife

without good character or to the property of an unseparated husband,—as being contradictory to the remaining part of the above text, namely,—“Even when partition has been made, the wife (*stri*), though preserving her character, is not entitled to immoveable property.”

The author of the Madanaratna points out a defect in the above conclusion on the ground that the above text of Vrihaspati is an interpolation inasmuch as it is not cited in the Mitákshará, the Kalpataru, the Haláyudha and the other commentaries,—but that the text of Prajapati, namely,—“Having taken his moveable and immoveable &c.”—is a genuine one, since it is quoted in all the commentaries; and characterizes the conclusion come to by the author of the Smritichandriká to be unreasonable, being simply an emanation from his inner consciousness: and he himself forms the following reconciliation, supposing the text of Vrihaspati to be a genuine one, namely, that the taking of the entire property including the immoveable—refers to a wife espoused in the forms of marriage, called Bráhma and the like, inasmuch as the term *patní* is used in these texts; but that the text of Vrihaspati is relative to a wife espoused in the A'sura or the like form of marriage, because the terms *jáyá* and *stri* only are employed in that text.

This is refuted in the Smritichandriká itself, in which it is said that a wife wedded in the A'sura or the like form is not comprised by the term *patní*; and the texts also, in which the term *jáyá* and the like occur, refer to her (*i. e.*, the *patní*), inasmuch as these texts rest on the same foundation (with the texts in which the term *patní* is used). As for what is said, namely, that the conclusion arrived at by the author of the Smritichandriká is a dogmatic one,—that also is not tenable. Because, if there be a daughter, then through her son there is a possibility of the enjoyment of immoveables, and of the spiritual benefit of the proprietor, therefore even the immoveables are taken (by the wife); but one that is destitute of daughter does not take the immoveable property by reason of the absence of such possibility: in this therefore may consist the reason (for the above conclusion of the author of the Smritichandriká). Accordingly it has been previously set forth

that without the consent of the sons the father has no right to alienate even his self-acquired property.

3. As for what appears from the text of Kátyáyana, viz.—“When the husband is dead, (the wife) preserving the honor of the family shall take the share of the husband for her life (or livelihood), not, however, the right to make gift, mortgage or sale,”—namely, that the wife succeeding to the property of the husband is entitled to mere maintenance out of the estate, but has no right to make gift, mortgage or sale thereof;—that also refers to the want of right to make gifts to players, dancers, &c. for secular purposes. Because he (Kátyáyana) himself sets out her right to make gifts for spiritual purposes, also to mortgage or sell so much as is sufficient for such purposes, in the text,—“Persevering in religious observances and fasting, leading a life of austerity, and constantly engaged in the control of passion and in making gifts, (the widow) though sonless, ascends to heaven,”—from the phrase “ascends to heaven” it appears that she has power to make gifts, &c., even in religious ceremonies that are optional, and *a fortiori* in those daily and occasional ceremonies which are enjoined by the Śástras, and the omission whereof entails demerit. And because to the same effect is the text of Prajápati cited before, namely—“Having taken the moveables and immoveables &c.” The author of the Smritichandriká, and others, say, that in this text too, the first (of the series of duties) being enumerated, her power to perform the optional ceremonies (at the expense of her husband’s property) follows.

There is again another text of Kátyáyana himself, namely,—“Let the sonless (widow), preserving unsullied the bed of her husband, and abiding with her venerable protector, only enjoy (her husband’s property) being moderate until her death, after her, let the heirs (or co-heirs, *dāyádas*) take.”

In interpreting this text the author of the Smritichandriká says;—“The meaning is, “let her being moderate,” *i. e.*, patiently enduring any opposition, offered by the (husband’s) co-heirs (*dāyádas*), to the application of the wealth, “enjoy until her death.” This again refers to such undivided property as the widow herself has taken

for her livelihood, when the father-in-law &c. being engaged in other pursuits are unable to afford protection, maintenance and the like ; for had it referred to divided property, it would have been contrary to the doctrine propounded by Manu and others.

The oriental commentators, however, putting an interpretation which appears on the face of the text (of Kátyáyana) say that the wife has no power of making gift, mortgage, or the like (disposition) of her husband's property, in the following passage :—“ ‘ Abiding with her venerable protector,’ *i. e.*, with her father-in-law or the like (kinsman of her husband), let her only enjoy her husband's estate during her life ; but let her not, according to her pleasure, deal with it as with *stridhan* by making a gift, mortgage, sale, or the like : after her, let the heirs, *i. e.*, the daughters and others who would be entitled to his property (in default of the wife), take the estate, but not the kinsmen ; since they being inferior to the daughter &c., ought not to exclude these : for the widow debars them (the daughter &c. from succession), and the absence of the obstacle (in the shape of the widow) is equal either in the case of the destruction, or in the case of utter absence, of her right ; they (the daughters &c.) therefore cannot reasonably be excluded. Nor can it be said that “ let the heirs” to *stridhan* “ take,” for then there would be tautology, inasmuch as Kátyáyana himself has declared in other texts the heirs to *stridhan*. Hence those persons who, in the text,—“ The wife and the daughters also &c.”—are in the absence of the preceding ones, exhibited as next heirs to the property of a sonless deceased person [who was separated and not re-united] shall, in like manner as they would have succeeded in case of the utter absence of the wife's succession, succeed to the residue of the estate after her enjoyment, upon the demise of the wife in whom the succession had vested. At that time the succession of the daughters &c. is proper, since they confer greater spiritual benefits than others. The following passage of the Mahábhárata in the chapter on the Religious merit of Gifts, is also in support of the above view,—‘ It is ordained that the property of the husband when devolving on wives has enjoyment (*upabhoga*) for its use : let not women on any account make a waste of her husband's property.’—Enjoyment again should not be by wearing delicate apparel and similar

luxuries; but since a widow may benefit her husband by the preservation of her person, the enjoyment of property sufficient for that purpose is authorized. Thus in the text,—‘With funeral repast and pious liberality &c.’—Vrihaspati intends by the term paternal uncle, any *sapinda* of her husband; by the term daughter’s son, the progeny of her husband’s daughter; by the term sister’s son, the husband’s sister’s son; and by the term maternal uncle, her husband’s mother’s family: to these alone, let her give presents in proportion to the wealth, at her husband’s funeral rites, and not to the family of her own father. With their consent, however, she may give to them also. Accordingly Nárada says,—“When the husband is dead, his kin are the guardians of his sonless widow. In the disposal of property, and care of herself, as well as in her maintenance, they have full power. But if the husband’s family be extinct or contain no male, or be helpless, the kin of her own father are the guardians of the widow, if there be no relations of her husband within the degree of a *sapinda*.”

On this it is to be said. Is it, that even when a gift or the like disposition of her husband’s property is made by the widow,—this is *per se* invalid? This, however, is not reasonable, since her succession to the entire estate of her husband being declared in the texts of Manu and other sages, her proprietary right arises thereto; hence it would be contradictory to say that gifts &c. (made by her) are *per se* invalid. Accordingly Jímútaváhana himself, having cited the following texts prohibiting gift and the like disposal of immoveable property, namely,—“But neither the father nor the grandfather is so, of the whole immoveable property,”—“Separated or unseparated kinsmen are equal in respect of immoveables &c.”—and—“Immoveables and bipeds, although acquired by a man himself &c.”—concludes that these texts are intended to show that moral guilt is incurred by a man of evil disposition, who makes gift and the like merely for the purpose of putting the family to distress; but they do not establish the invalidity of gifts and the like in themselves; for it would be unreasonable to say that they do so, because the proprietary right which is defined to be the power of disposal according to pleasure,—in the immoveable property is not dis-

tinct from what it is in other objects, and because a fact cannot be altered even by a hundred texts. Hence in the manner mentioned by him, let, in this instance too, moral offence, by reason of the violation of the prohibition, be incurred by a widow who out of evil disposition makes gifts &c. of her husband's estate, solely for the purpose of putting the kinsmen (of her husband) to distress. And certainly a moral offence too is not committed by one who makes gifts for religious purposes, or who sells or mortgages for the purpose of her own maintenance. Nor can it be said that from the restriction expressed by the term, "only enjoy," as well as from the declaration—"After her let the heirs take,"—what alone can follow is her incompetency to make gifts &c. as in the case of joint property. Because this (*i. e.* the separate property) which is the subject of exclusive right is different from joint property which is the subject of common right. Nor can it be asserted that inasmuch as the enjoyment by the widow (of her husband's estate), which follows (from the assertion of her heirship,) cannot be taken to be intended to be declared (in the text of Kātyāyana), therefore the text is solely for the purpose of prohibiting gifts &c., and accordingly her want of right to make gifts &c. inevitably follows. Because, (you say) a fact cannot be altered, hence it cannot but be admitted for the sake of the consistency of that rule, that the text is intended to prohibit the waste of the property by useless gifts &c. Otherwise if her right (to make gifts &c.) be not admitted, then there would be an irreconcilable conflict (of the text of Kātyāyana) with the texts enjoining gifts, namely,—“... engaged in the control of passions and in making gifts ...,”—and—“... with funeral repast and pious liberality let her honor &c.” As for what is said, namely, that let the heirs, *i. e.*, the daughters &c. who are declared in the text,—“The wife and the daughters also &c.”—to be entitled to the estate in default of the wife, take, since the default of the wife who forms the obstacle (to the succession of the daughters &c.) is equal, as in the utter absence, so in the destruction, of her right:—that is only plausible. Again, as there would be tautology if the term “heirs” be interpreted to signify the heirs to *stridhan* by reason of their being mentioned in

another text, similarly there would be the same defect of tautology (in the interpretation put by you), for the heirs of the husband also are mentioned by Kátyáyana in a separate text.

But in fact when a person in whom right vested dies, it is proper that his property should be inherited by his near relations; hence, as the words wife and the like are relative terms, what have the daughters and the like of the former proprietor to do, when right to the husband's estate had vested in the wife? Hence, although the absence of the preceding one, the previous absence (of something that subsequently comes into existence) the destruction (or the future absence of some thing previously existing), the utter absence (or the absence without relation to any particular time), the relative absence of the obstacle, and the reciprocal absence (or the negation of identity) are similar (all these being of the same category, namely, negation), still when the owner of any property is dead, then if he leave no male issue, his property is inherited by his relations, such as his wife &c.: this is what the text (of Yájnavalkya, § 1) means. Otherwise there would be great confusion, since if the daughters and the rest having succeeded to the property of their father &c. die, then in supercession of their children, the father &c. of the father who was the previous owner, would take the property. Hence when the wife after having succeeded to the property of her husband dies, the residue of the property after her enjoyment would have devolved on (her heirs such as) the daughters and the like, by reason of texts like the following,—“And the daughters, the residue of the mother's property after liquidating her debts &c.”:—but it is prevented by the passage,—“After her let the heirs take.” And the construction of the text (of Kátyáyana) is arrived at thus: on perusing “let the heirs take,” the question occurs, whose heirs? and the word “of the husband” connected with the word “bed” suggests itself and is construed with “heirs;” accordingly the signification of the text is as follows,—“After her let the husband's heirs or *dáyádas*”, i. e., those that are entitled to take his undivided property, “take” also what remains of the estate of a separated brother after the enjoyment thereof by his wife; and not the heirs to

the estate of the wife, such as daughters and the like. Thus the last part (of Kātyāyana's text) expressing a meaning which is not expressed anywhere else, becomes significant : but according to the other view, this part would become useless, inasmuch as it would merely repeat what is declared in other texts.

Therefore, it is established that in making gifts for spiritual purpose as well as in making sale or mortgage for the purpose of performing what is necessary in a spiritual or temporal point of view, the widow's right does certainly extend to the entire estate of her husband ; the restriction, however, is intended to prohibit gifts to players, dancers and the like, as well as sale or mortgage without necessity. Accordingly the term "being moderate" is inserted ; the meaning is, that on obtaining the property she shall not uselessly spend the property. The passage in the Mahābhārata on the religious merit of gifts, however, strongly supports our view, for it begins thus : "It is ordained that the property of the husband when devolving on wives has enjoyment for its use." Here enjoyment (*upabhoga*) signifies enjoyment allied to religious duty, not however vicious enjoyment ; "ordained," i. e., declared by Manu and others. In the latter half (of the passage) the very same thing is expressed, namely, "women shall not waste", i. e., uselessly expend the property of their husband ; by the phrase "on any account" it is intimated, that waste is under all circumstances reprehensible ; *apahāra* (waste) is theft,—making useless gifts to dancers, players, and the like, and the wearing of delicate apparel &c., the tasting of rich food &c. and the like, also being improper for a widow who is enjoined to restrain her passions, are equal to theft : thus the term *apahāra* (waste) is used in a secondary sense. But gifts and the like for religious purposes are not so, and consequently cannot be included under the term *apahāra* or waste. Therefore everything is consistent.

4. There are also many other passages of law, establishing the preferable right of the wife to succeed to the estate of her sonless husband who was separated but not re-united. Thus Vrihaspati says,—“In the Vedas and in the Smritis as well as in popular practice, a wife is de-

clared by the wise to be half the body of her husband equally sharing the fruit of pure as well as impure acts. Of him, whose wife is not deceased, half the body survives. Why then should another get his property, while half his person is alive? Let the wife of a sonless deceased man take his share notwithstanding kinsmen, the father, the mother, or the uterine brother be present."

Yogisvara also by declaring the right of every succeeding one to accrue in default of the preceding one, ordains the wife's succession in preference to all others.

Also Vishnu says,—“The wealth of a sonless man goes to his wife; on failure of her it devolves on daughters; if there be none, it belongs to the father; if he be dead, it goes to the mother; on failure of her, it goes to the brothers; on their default, it goes to the brother's sons; if none exist, it passes to a kinsman (*bandhu*); on their default, it devolves on a distant kinsman (*sakulya*); on failure of these, it comes to the fellow-student; and for want of all those heirs the property goes to the king, excepting the wealth of a Brāhmaṇa.”—Here the term *bandhu* (kinsman) signifies a *sapinda*, and the term *sakulya* (distant kinsman) means a *sagotra* or one descended from a common ancestor in the male line (other than a *sapinda*): if by the term *bandhu* the cognates of the father and the like were comprised, then there would be a conflict with the order mentioned by Yogisvara.

Also Kātyāyana says,—“The wife is entitled to the estate of the husband, provided she is not unchaste; but on her default, a daughter, if she be then unmarried.”

There is also another passage of law,—“Now of a sonless person, the wife born in a (good) family, or also the daughters, in their default the father, the mother, the brother and (his) sons are pronounced (to be heirs).”

In these texts it is established that the wife is first of all entitled to the estate left by the husband.

5. There are texts again, which are in conflict with the above texts. Thus Nārada declares the succession of the brothers in spite of the wife, and the maintenance of his wife, as in the text,—“Among brothers if any one die without issue or enter a religious order, let the rest (of the

brothers) divide his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives (*strīṇām*) until the end of their lives, provided they preserve unsullied the bed of their husband; but if they behave otherwise, the brothers may resume her allowance."

Also Manu declares that the father or a brother is entitled to succeed to the property of a sonless person, not the wife, as in the text,—“Let the father or the brothers take the estate of a sonless person.”

The following passage of law asserts that the mother or the paternal grandmother is entitled to succeed to the estate of a sonless person,—“Let the mother take the estate of her childless son; and if the mother too be dead, let the father's mother take the property.”

Also Sankha, Likhita, Pāṭhīnāsi and Yama declare the succession of the wife in default of the brothers and the parents, as in the text,—“The wealth of a sonless person, who departs for heaven, goes to the brothers; if there be none, let the parents take, or let the senior wife take.”

The wife who is, by Yogīśvara, placed first to the exclusion of others, is declared also by Devala, to be entitled to succeed on failure of the brothers and the like, as in the text,—“Next let brothers of the whole blood divide the estate of a sonless person, or daughters also equal (in class); or let the father if he survive, or (half) brothers of the same class, or the mother, or the wife inherit in their order.”—Here by the term “brothers”, half brothers are meant, since whole brothers are separately enumerated.

Also in the following text, the wife is not even enumerated by Kātyāyana, though father and others are mentioned as heirs,—“When a man who is separated, dies, then in default of sons let the father, or the brother, or the mother, or the father's mother in their order take the estate.”

6. Of these texts, conflicting with each other, Dhāresvara makes the following reconciliation:—If the wife of a sonless brother who was separated but not re-united, accepts the appointment to raise issue, then and then only she obtains the estate of the husband; but if she be not solicitous of the appointment, then she gets mere maintenance like the wife of one who was unseparated or re-uni-

ted : for it is through appointment alone, that the right of the wife of a sonless person accrues to the estate of her husband. Nor (can it be said) on what principle is this conclusion based ? Because the wife's right of inheritance is shewn in many passages of law to arise through children alone. Accordingly Gautama says,—“ Let kinsmen allied by the *pinda* or funeral oblation, by *gotra* or family name, and by descent from the same patriarch share the heritage ; or the wife of the childless person, or she (may) seek to raise up offspring.”—Let kinsmen allied by funeral oblation, by family name, and by descent from the same patriarch, take the heritage of a childless man ; or let his wife take the heritage, if she seek to raise up issue to him : the particle ‘or’ conveys the meaning of ‘if’ ; otherwise, the sense of alternative would be unreasonable, since there is no similarity between taking of the heritage and seeking to raise up issue. Likewise, also Manu declares that the wife's succession to the divided property is in right of the progeny, as in the text—“ He who protects the estate and the wife of a deceased brother, shall after generating a son to the brother, make over his estate to him.” So likewise, even if partition has not taken place, Manu intimates that the right of inheritance arises through the offspring, thus,—“ If a younger brother begets a son on the wife of an elder brother, then the distribution in such a case shall be equal ; this is the settled law.” Therefore by the principle of co-existence and the absence of separate existence, it is established that the wife's right of inheritance is in right of progeny and not otherwise. Vasishṭha also, in the text,—“ An appointment shall not be accepted through covetousness for the heritage”—forbids an appointment to raise up issue to the husband if sought from covetousness, and thereby clearly intimates that the widow is entitled to the succession if she consents to the appointment and not otherwise. Accordingly it follows that the text of Nārada, namely,—“ If any one of the brothers die &c.,”—and similar texts refer to a widow who is unwilling to be appointed. Likewise in the text, namely,—“ Their childless wives, conducting themselves aright, must be supported ; but such as are unchaste should be expelled, and so indeed should be those that are perverse”—Yogisvara also, by

ordaining maintenance for the wives of the blind and the like who are destitute of sons, and thus intimating the superiority of the son's right to the wealth, indicates, by the parity of reason, that the wife's right of succession is in right of the progeny alone. The following passage of law, namely,—“Property has come into existence for the purpose of sacrifices; therefore those, who are incompetent to perform these, are not entitled to inheritance, but are entitled to food and raiment”—by declaring the exclusion from inheritance, of sons &c. though males who are incapable of performing sacrifices, does *a fortiori* oppose the right of succession of widows who are incapable of performing sacrifices. So also another text of law, namely,—“Property is ordained for sacrifices; therefore it should be given to virtuous persons, and not to women, to the ignorant or to the vicious”—prohibiting even the gift of property to women and others, greatly depreciates the taking, directly by the widow, of the entire estate.

7. This view is not endorsed by Vijnānesvara and others; because in texts like—“The wife and the daughters also &c.”—there is no express mention of appointment, nor is it suggested by the context. Moreover, what is the cause of the widow's right to the heritage? Is it the appointment or the progeny sprung therefrom? If it be the first, then the heritage would belong to the widow who accepts the appointment although no son be born, and (even if a son be born) it would not belong to the son begotten through the appointment, for (agreeably to this alternative) right to the husband's estate arises from the appointment alone. If it be the second, then the enumeration of the wife (as an heir in the texts) would be useless, since the children's right to the heritage is established by other texts. Again, if the argument be that women may have right to property through their husband alone, and not in any other way, therefore so long as the husband is alive, they have it through him; but in order to show that when the husband is dead they may have it through the progeny, ‘the wife’ is so enumerated, which refers to a wife willing to accept the appointment. Then it is not a sound one; because it is shown by texts which

will be cited hereafter, such as,—“What was given before the nuptial fire, what was presented in the bridal procession &c.”—that they may have right to property in other ways also. If it be said that it is only in the twofold way that her right to the husband's property arises. In that case, the text dealing with the estate of a sonless person ought not to commence with “the wife;” because while the husband is alive, her right to his property is established by the text of Gautama, namely,—“Union (of the husband and the wife) arises indeed from the joining of hands (*i. e.* marriage);” and because, to say that when he is dead the right to his property arises by reason of appointment, is to affirm it only of the wife's son, but that also has previously been declared.

Again the text of Gautama, namely,—“Or she (may) seek to raise up offspring”—has been interpreted to mean, ‘if she seek to raise up issue,’ and has been set forth as an authority in support of the position that the wife of a sonless person may have the right of succession through appointment alone. But that is not reasonable. Because the sense of ‘if’ is not conveyed by ‘or’ that marks an alternative. Nor can it be argued that, when it becomes unreasonable to say that ‘or’ marks an alternative by reason of the dissimilarity in meaning between the succession to the estate and the desire for appointment, then inasmuch as indeclinable words convey various meanings, the particle ‘or’ may certainly be taken to convey the meaning of ‘if,’ which renders the construction of the latter part with the first part (of the text of Gautama) reasonable. Because it is certainly reasonable to say that ‘or’ marks an alternative, since it may refer to another duty suggested by the context, thus—‘or she may seek to raise issue or restrain her passions.’ Accordingly the succession to the husband's estate, independently of the appointment, becomes affirmed by also the text of Gautama. Moreover, since the appointment of a widow is prohibited; and since by texts of Manu and others, such as—“The sonless wife preserving unsullied the bed of her husband &c.”—it is established that a widow is entitled to the estate, provided she remain chaste; and since by the text,—“such as are unchaste should be ex-

pelled"—even maintenance itself is disallowed to those that fail to continue in the path of duty; therefore the right (of unchaste widows) to the entire estate of the husband is certainly unreasonable.

As for the argument, namely, that from the texts of Manu and others, such as—"He who protects the estate and the wife &c."—"If a younger brother begets a son on the wife of an elder brother &c."—and—"An appointment shall not be accepted through covetousness"—it appears, by reason of co-existence and the absence of separate existence, that the widow's right to the estate of her husband whether separated or unseparated arises through progeny alone;—that is only plausible, the language of the texts does not convey the meaning deduced: the intention of the texts being that when the husband who is unseparated or re-united dies, then her right to his estate arises through progeny alone, and that the appointment should not be accepted from covetousness. Accordingly, Nārada having declared,—“The sages hold that amongst the re-united brethren however, that share (which would go to the husband on partition) she is not entitled to”—establishes mere maintenance of his childless wives. Nor can it be argued that if the text of Nārada, namely,—“Among brothers if any one die without issue &c.” (§ 5)—be thus taken to be relative to the estate of a person unseparated or re-united, then there would be tautology, for the same thing is expressed in the above text, *viz.*—“The sages hold that among unseparated brethren &c.” Because in the first text are laid down the impartibility of woman's separate property, and their maintenance which are not ordained in any other text, and the subject is introduced by that part of the text (which conveys the same meaning as the other text). As for the text of Yogisvara, namely,—“Their childless widows conducting themselves aright &c.”—that, however, will be shewn in the chapter dealing with those that are excluded from inheritance, to refer to the wives of the impotent and the like, since the pronoun ‘their’ relates to those mentioned in the previous text.

As also for the argument that the property of a twice-born has for its object the performance of sacrifices, and

that consequently it is improper that the property should be taken by a widow who is incompetent to perform sacrifices;—that too is unreasonable, because the term ‘sacrifice’ is illustrative, it includes gifts &c., and these the widow also is competent to make; for if the term were taken in its literal acceptance, then the property could not be used for gifts, burnt-offering and the like purposes other than sacrifices. But in reality the performance of religious rites is not the sole end of property; for in the text,—“Neglect not religious duty, wealth and pleasure according to ability,”—likewise in the text,—“Let not morning, noon or evening be fruitless as regards religion, wealth and pleasure,”—it is laid down that the pursuit of wealth and pleasure, that may be made by means of wealth, is necessary. Had wealth been designed solely for sacrificial purposes, then the wearing of gold (inculcated by the Vedas) would have had the sacrificial use for its object by reason of its intimate relation with sacrifices (as supposed); but this would be contrary to what is concluded (in the *Mīmāṃsā*) *viz.*, that it is intended for secular purposes. By reason of such texts as,—“A woman is not entitled to independence”—let there be only dependence of a woman, but there can be no objection whatever to her succession to the estate. And the text—“Property has come into existence for the purpose of sacrifices &c.”—however, is laudatory of the application of property to the performance of sacrifices. Accordingly the latter part (of the other text) is—“to virtuous persons and not to women, to the ignorant or to the vicious.” The author of the *Mitāksharā*, however, says that these texts intend that the property which was acquired by the father for the purpose of performing a sacrifice, must, even by his sons or other heirs, be appropriated to that use alone and not to any other; for the following passage declaring it to be an offence (to act otherwise), is equally applicable to sons as well as to other heirs:—“He, who having received articles for sacrifice, disposes not of them for that purpose, shall become a kite or a crow.”

8. Srikara and others, however, say that the conflicting texts relate to distinct cases: if the husband's

estate is only sufficient for the maintenance of the wife, she takes the whole of it; but if there be a surplus, the brothers and the like take: to the very same effect is the text,—“and take the entire share;” for maintenance must be allowed. And they assign the following reason for that conclusion, *viz.*, that by this all the texts become reconciled.

This is not consistent with reason. Because the term ‘estate’ which is mentioned but once (in the texts) is to be interpreted, when construing it with ‘the wife,’ to mean so much property as is sufficient for maintenance; and when construing it with ‘the brothers’ or the like, to mean the unqualified estate: and this variableness in the meaning is not reasonable if uniformity is possible. And because the term ‘entire’ in Manu’s text would be meaningless. Besides it is very unreasonable to say that, when there is no son, the wife gets no more than maintenance; for, on partition being made, whether during the lifetime of the husband or after his death, even when there are legitimate sons, the allotment to the wife of a share equal to theirs is ordained in the following texts, namely,—“If he makes the allotments equal, his wives shall be made equal sharers,”—and—“The mother also, of those effecting partition after the demise of the father, shall get an equal share.” Nor can it be argued that in these texts too, the term ‘share’ is intended to indicate no more than what is sufficient for maintenance. Because in that case the terms ‘equal’ and ‘share’ would become meaningless. And because, if it be held that what is sufficient for maintenance, is only intended, then in the latter part also (of the text), namely,—“If any have been assigned, let him allot the half,”—the meaning of the term ‘half’ would have to be altogether rejected. To say that what is intended is, that when the property is small a share equal to that of a son (should be given to her), and when the property is large, so much only as is sufficient for maintenance, is extremely unreasonable by reason of the variableness in the precept. Since the very same term ‘equal share’ would, having regard to some other text, signify, on one occasion when the estate is considerable, property sufficient for maintenance only; and on another

occasion when the estate is small, its literal meaning : hence in the same precept the meaning of the sentence being different, there would be different sentences (couched in the same words):—and this is unreasonable. There would also be the error of admitting the simultaneous exercise of the twofold power of words, namely, that of conveying a literal and a metaphorical meaning.

Just as in the topic (in the *Mimāṃsā*) of the *Chāturmāsya* (*i. e.*, a sacrifice which takes four months for its completion, and which consists of four distinct sacrifices called the *Vaisvadeva*, the *Varunapraghāsa*, the *Sākamedha* and the *Sunāsīrya*; with regard to which there is the following text of *Sruti*,—"Here they construct the holy fire-place, not in the *Vaisvadeva* nor in the *Sunāsīrya*: for the *Varunapraghāsa* and the *Sākamedha* are the principal ones of the sacrifice, as in these two they establish the sacred fire,") the adversary says that the injunction regarding the establishment of the holy fire (ordained for the sacrifice called *Darsapaurnamāsīya*, whereof the *Chāturmāsya* is a modification) is applicable also to the *Chāturmāsya*, as indicated by the text,—“as in these two they establish the holy fire,”—and this, he assigns, to be the reason for the prohibition of the construction of the sacred fire-place, as contained in the text,—“not in the *Vaisvadeva* nor in the *Sunāsīrya*,”—for otherwise the prohibition of what cannot take place would be unreasonable: thereupon it is argued on the opposite side that this is not the prohibition of the construction of the holy fire-place which is rendered applicable to the *Chāturmāsya* sacrifice by reason of the extension of the injunction to that effect, declared with regard to the *Darsapaurnamāsīya*; but this is the prohibition of the construction of the holy fire-place, as enjoined in the text in this topic, *viz.*,—"Here they construct the holy fire-place": whereupon the adversary finds fault with the above opinion on the ground of variableness in the precept, for the text in the topic, taken together with the prohibition (in that very text) renders the construction of the holy fire-place optional, in the first and the last sacrifices, but it does independently of any other precept, render the construction of the holy fire-place obligatory in the two inter-

mediate sacrifices: for fear of this variableness in the precept it is established in the conclusion that the precept,—“not in the Vaisvadeva &c.”—is absolutely a superfluous precept, for prohibition is unreasonable, of what cannot take place in the first and the last sacrifices; but the precept—“Here they construct the holy fire-place,”—together with the laudatory precept—“in these two they establish the holy fire”—enjoins the construction of the sacred fire-place in the two intermediate sacrifices, namely, Varunaspraghâsa and Sâkamedha; but this is not in consequence of the extension to this sacrifice of an injunction declared with respect to the Darsapaurṇamâsîya sacrifice.

9. On this some one says:—It is declared that the brothers shall take the estate of a sonless person, and that they shall give to his wives property sufficient for their maintenance, as in the text,—“and shall allow maintenance to his wives till the end of their lives:” but when the estate is not more than what is sufficient for maintenance, or even less than that, then the question occurs whether in such a case the brothers shall take the estate or the wife? And the text,—“The wife and the daughters also &c.”—by showing the priority of the wife’s right, indicates that in such a case, the wife alone shall take the estate.

This too is wrong; since in this view too, there would be the very same variableness in the precept as has previously been mentioned; for the phrase “shall take the estate,” taken together with other texts in case the estate is small, would signify when construed with “the wife,” shall take so much property as is sufficient for maintenance; but when construed with “the parents &c.,” shall take the entire estate.

10. If you ask, how then is the conflict to be reconciled? Listen:—Since there is no indication of order (of succession) in the texts such as,—“The father or the brothers shall take &c.”—therefore these texts are intended only to enumerate the heirs to the estate of a sonless person: but the text of Yogîsvara which lays down,—“In the absence of the preceding one, every succeeding one is heir to the estate”—is relative to the order of succession:

therefore although in the other texts there is no mention of the wife and the rest in a settled order, still there being no conflict in meaning (between these two sets of texts), the father and the rest become heirs to the estate of a sonless person in default of the wife and the like.

The succession, however, of a wife that is suspected of adultery, is forbidden by Háríta,—“If a woman becoming widow in her youth be headstrong, a maintenance must in that case be allowed to her for the support of life.” From this very text it appears that the widow who is not suspected of unchastity, is entitled to take the entire estate of the husband. Accordingly it is said in the text of Sankha,—“or the senior wife:” ‘senior’ means praiseworthy for good qualities, but not the eldest in age. Manu also declares seniority in the order of the classes,—“When regenerate men espouse wives of the same class as well as of a different class, the seniority, honor and habitation of those wives must be settled according to the order of the classes.” Hence a wife of the same class, although youngest in age and in respect of the date of marriage, is senior to one of a different class; also among those of the same class, the senior is one possessed of good qualities. Accordingly Manu says,—“To all such married men, the wives of the same class, and not the wives of a different class on any account, shall perform the duty of personal attendance, and the daily business relating to acts of religion: for he who foolishly causes those duties to be performed by any other than his wife of the same class when she is near at hand, has been immemorably considered as a Chandálá though by birth a Bráhmaṇa.” Also Yogisvara says,—“Among wives of the same class, one other than the eldest should not be employed in the performance of religious duties.” Also, a wife of the same class is indicated by the term *patni* itself, which signifies union through a sacrifice. But in the absence of a wife of the same class, a wife belonging to the class next in order, (may be employed in the performance of such duties): accordingly Vishnu says,—“If there be no wife belonging to the same class, then under the exceptional circumstance, a wife belonging to the class next in order (may be employed); but never (should) a regenerate man (perform)

religious duties, with a wife of the Súdra class :”—the term “should perform” occurring in the previous text is to be construed with this text. Hence in default of a Bráhmaṇi wife, a Kshatriya wife may be the companion of a Bráhmaṇa under that unavoidable circumstance ; but neither a Vaisya nor a Súdra woman though espoused : a Vaisya wife alone may become the associate of the Kshatriya husband in default of a Kshatriya wife : a Vaisya may not have a Súdra wife (for his companion in the performance of religious duties) but must have one of the same class ; for a Súdra wife is altogether excluded.

Accordingly a wife who is not suspected of unchastity, and who is of the superior class, shall take the husband's estate, and maintain her co-wives of the inferior classes. But the wives of the same class with the husband shall take the estate dividing it amongst themselves. Hence the singular number in the term ‘wife’ is to be taken to be used with the intention of designating the class.

Hence the chaste wife of a sonless deceased person who was separated and not re-united, is entitled to take the entire estate : but of a sonless person who was unseparated or re-united, even the chaste wife is entitled to mere subsistence, by reason of the texts of Nárada and others, such as,—“If any one among brothers die without issue &c.” An unchaste widow, however, is not entitled even to maintenance, for it is declared,—“But if she behave otherwise, they may resume the allowance.”

As for the allowance of food and raiment even to the unchaste wives, as is declared in the following text, namely,—“Also let one act in the same manner towards even the fallen wives ; food and raiment, however, should be allowed to them, if they reside in the vicinity of the dwelling house :”—that however is to be explained as referring to the husband, consistently with what is ordained by Yogísvara after having premised the husband, as in the text,—“Deprived of her position in the family, clad in dirty clothes, living upon morsels barely sufficient for life, and humiliated, an unchaste wife shall be made to lie down upon the bare earth.” This too is to continue till the penance be performed. The banishment by also the husband, and the like mode of expiation for those women

that do not out of perverseness perform the ponance, will subsequently be considered by us.

The text, namely,—“The wife and the daughters also &c.”—is relative to the estate of one who was separated and not re-united ; for partition (of a joint family) has previously been treated, and partition after re-union, has by way of an exception to all other cases, been subsequently dealt with, (by Yājñavalkya), consequently this is the only case which remains to be discussed. This is the opinion of most commentators, namely, Vijnānesvara, Lakshmīdhara, the author of the *Smritichandrikā*, Visvárūpa, Medhātithi, the author of the *Madanaratna*, &c.

11. The term ‘sonless’ used in the texts (on succession) such as,—“The wife and the daughters also &c.”—indicates the default of the grandson and the great-grandson also. The succession of the wife is proper only in default of male issue down to the great-grandson. For the duty of the grandsons too, to pay off the debts is declared in the text,—“The debts ought to be liquidated by the sons and grandsons (*putra-pautrais*) ;” but if any one else were to take the estate in spite of the grandson, then the declaration of the grandson’s liability to discharge the debts would be unreasonable ; since by reason of the text,—“The heir to the estate of a person shall be compelled to liquidate his debts,”—he alone who takes the estate is declared liable to discharge the debts. If it be argued that the grandson is included under the term ‘gentiles,’ and as such may take the estate : then, in that case, there would be no use for the special provision regarding the grandson’s liability to discharge the debts ; since it would follow from the text alone, viz.—“The heir to the estate of a person shall be compelled to liquidate his debts.” If it be said that the grandsons are liable, in the same way as sons, to liquidate the debts, although they do not get the grandfather’s estate. Then *a fortiori* it follows that when property is left by the grandfather, the right of any other than the grandson ought not to take place. The very same reason applies to the great-grandson also. Hence it is that the compound term *putra-pautrais* (rendered above into, by the sons and grandsons) bears the

plural number : otherwise the dual number would have been used, or it would have to be assumed that the plural number is used in order to denote individuals. Thus the meaning is this:—the term *puttra-pauttra* may be taken to be a compound of *puttra* and *pauttra* and *puttra's pauttra* ; and the plural number is accounted for by taking the term *puttra-pauttrais* to be the result of the uni-residual conjunctive compound of two similar terms, namely, *puttra-pauttrau* (bearing a dual number and signifying the sons and the grandsons) and *puttra-pauttra* (bearing a singular number and signifying the great-grandson) ; that is to say, by the sons, grandsons and great-grandsons : or the term grandson may include the great-grandson. Accordingly the different sorts of provisions for the liquidation of the debts by the great-grandsons as distinguished from the same by the grandsons, and by the grandsons as distinguished from the same by the sons,—become consistent with reason. Otherwise there would arise the objection of assuming a peculiar provision so far as regards the great-grandsons.

Again, it is clear that the three descendants equally confer spiritual benefit by offering oblations in the *parva* occasions. Accordingly Manu says,—“To three (ancestors) must libations of water be given ; for three, is the funeral oblation of food ordained : the fourth is the giver of these ; the fifth has no concern in them.” Also Baudhāyana having premised son, grandson and great-grandson, says,—“The great-grandfather, the grandfather, the father, the man himself, the uterine brothers, the son begotten by a wife of the same class, the grandson and the great-grandson : these, partaking of undivided oblations, are called *sapindas*. Those who partake of divided oblations are called *sakulyas*. When there is male issue of the body, the estate must go to him.”—The meaning of this text is as follows:—Since a person (when deceased) partakes of the oblations presented to the three paternal ancestors beginning with the father, by reason of the union of oblations (effected through the ceremony called *sapindikaram*) ; and since the three descendants in the male line beginning with the son present oblations to that person himself ; and since he, who while living offered oblations to an ancestor

in the male line, partakes when dead, of the oblations presented to that ancestor, by reason of the union of oblations: thus the middlemost person who while living offered oblations to his ancestors, and when dead partakes of the oblations presented to them, becomes the object to whom oblations are presented by others that are living, and partakes with these latter while they are dead, of oblations presented (to him) by the daughter's son and the like. Therefore those to whom that person offers oblations, as well as those who partake of the oblations presented by him, as also those who present oblations to him, are, as partaking of undivided oblations consisting of the *pinda*, the *sapindus* of that person by reason of connection through the same *pinda*. To an ancestor who is fifth in ascent, the middlemost person who is fifth in descent, does not present oblations, nor does he partake of oblations presented to that ancestor; similarly the fifth descendant does not confer oblations on the middlemost person, nor partakes of oblations presented to him. Consequently the three ancestors beginning with the great-great-grandfather and the three descendants beginning with the great-great-grandson, that is, the three beginning with the fifth on both sides, who partake of divided oblations, and are not connected through the same *pinda*, are by the sage called *sakulyas*, inasmuch as they are only connected through the *kula* or family.

This *sapinda* and *sakulya* relationship is declared with reference to succession, as it is mentioned in the chapter relating to that subject. But with reference to impurity, marriage &c., those also that partake of the divided oblations (*i. e.* the *sakulyas*) are considered as *sapindas*, by reason of the text,—“The fourth and the other ancestors who partake of the *lepa* or divided oblations, and the father and the like to whom the *pinda* or oblation is offered (are *sapindas*); to these the seventh offers oblations, hence *sapinda* relationship extends to seven generations.” And the text,—“The *sapinda* relationship, however, ceases in the seventh generation”—is to be explained consistently with the text of Yājñavalkya, namely,—“After the fifth and the seventh from the mother and the father (respectively)” —to mean that it remains in the seventh but ceases

in the eighth generation. Hence as in the case of the unmarried females, the *sapinda* relationship extending over three generations, as is declared in the chapter on impurity (occasioned by death &c),—is considered to be with reference to that alone; so it is to be deemed that this *sapinda* relationship (extending to the fourth degree) is relative to succession alone.

Kátyáyana, however, distinctly declares the succession of the son, grandson and great-grandson, as in the text,—“When a son dies unseparated, his son who has not received maintenance from the grandfather, shall be made participator of the heritage; he is to get, however, the paternal share from the uncle or uncle’s son: the very same share shall equitably belong to all the brothers: or his son also shall get: afterwards cessation (of succession) takes place.” But it is to be borne in mind that the cessation of the right of the great-great-grandson and the like who are further removed than the great-grandson,—as mentioned in this text, refers to them as *sapindas*; for as *sakulyas* they are certainly entitled to succeed according to proximity.

As for the text, namely,—“If among uterine brothers, one becomes father of a son &c.”—that, however, refers to the performance of a son’s duties such as the *śrád̥dha* but not to the taking of heritage, and that lays down the restriction, namely, that when a brother’s son is available for taking in adoption none else should be made a subsidiary son: otherwise the mention of the brother’s son after the brother, in the text enumerating the heirs to the estate of a sonless person and laying down the order of succession, would become inconsistent.

The three descendants beginning with the son confer the greatest amount of spiritual benefit on the three ancestors beginning with the father, consequently the estate conducing as it does to the benefit of the owner himself when taken by the sons &c. continues, as it were, the owner’s own by reason of the proximity of benefit. And the nearness on account of the spiritual benefit is consistent with reason: thus it is ordained,—“As soon as the eldest son is born, a man becomes father of male issue and is liberated from the debt he owes to his ancestors; therefore

he (the eldest son) is entitled to get.”—Since, in the chapter on Partition of Heritage, the conferring of spiritual benefit is by the term ‘therefore’ set out as the reason; hence it is indicated that he alone is entitled to get the estate, on whom the estate being devolved conduces to the greatest amount of spiritual benefit of the deceased owner, and that proximity in this way is to be accepted as a general rule and reasonable.

That the son and other descendants confer the greatest amount of spiritual benefit is set forth in many passages of the Sruti, the Smṛiti, and the Purāṇas. On this subject there is the following Sruti:—In the anecdote of Harischandra in the Bahvrichabrahmaṇa it is said that Nārada being asked by Harischandra thus,—“Explain to me, O Nārada! what is attained by a son, for those that are learned as well as those that are not, are solicitous for sons,”—enlightened him by ten verses delineating the importance of a son: he being asked in one verse answered in ten, thus,—“If the father sees the face of his living son after it is born, he transfers his debts to it and attains immortality &c.” The following passages of the Smṛiti are to the same effect. Manu and Vishnu say,—“Since a son delivers the father from the infernal region called *put*, therefore he is named the *put-tra* (the deliverer from the *put*) by the self-existing himself.” Sankha and Likhita say,—“Seeing the face of a son in his lifetime, the father becomes liberated from his debt to the ancestors, and becomes entitled to go to heaven by means of the son born, after transferring that debt to him. The sacred fire, the three Vedas, and all the sacrifices with fees to the priests, are not equivalent even to a sixteenth part of the eldest son born.” Manu, Likhita, Vasishṭha and Hārita say,—“By means of a son one attains the heavenly regions, by a grandson acquires immortality, and by a son’s grandson attains the solar region.” Yājñavalkya declares,—“As the blissful regions and the heaven are attained by means of sons, grandsons and great-grandsons, therefore wives should be taken and guarded well.” In the Purāṇas, again, there are many anecdotes laudatory of the son &c.

Hence it is established that it is only in default of male issue down to the great-grandson that the wife takes

the estate of the husband who was separated and not re-united.

12. Jímútaváhana maintains that the above reconciliation is not tenable by reason of conflict with the text of Vrihaspati. Thus he says:—"In the text,—‘When brothers who have been separated dwell together through affection, then in the re-distribution among these there is no specific deduction for seniority: if any one of them dies or anyhow retires, his share is not extinguished but belongs to his brother; if there be any sister, she is entitled to obtain a share of it: this is the law regarding the estate of a childless person who is destitute of the wife and the father: of the re-united, however, if any one acquires wealth by science, valour and the like; two shares are to be allotted to him, and the rest are equal sharers’—re-union is mentioned in the commencement as well as in the concluding portion; therefore it must be admitted that the intermediate portion, namely,—‘his share is not extinguished but belongs to his brother’—refers to the case of re-union: also it is declared that, ‘this is the law, regarding the estate of a childless person who is destitute of the wife and the father;’ hence it appears that the right of the re-united uterine brother takes effect in default of son, daughter, wife and father; how then can a brother debar the wife? Moreover the portion, namely, ‘his share is not extinguished,’ becomes reasonable, if the brother was unseparated or re-united, as there might be an apprehension of the extinction of his share by reason of the mixture; but if the brother was separated and not re-united then his estate being separate, there cannot be any apprehension of extinction: from this reason as also from indication it appears that the above text refers to a case of re-union.

“Moreover, is it by reason of any other clear text or by reason of any strong argument that the texts of Sankha and other sages, which indicate the right of the brothers to be preferable to that of the wife, are maintained to refer to the estate of one who was unseparated or re-united? The first is not tenable, by reason of the absence of any clear special text. The text, however, which will be cited hereafter, namely,—‘Of a re-united (co-heir), however, a

reunited (co heir)'—lays down a special rule when the succession opens to brothers ; it does not convey the contended meaning. The text of Vrihaspati, however, indicating as it does the succession of a re-united uterine brother in default of those beginning with the son and ending in the father, rather shows that the texts in question are relative to the estate of one who was not re-united. Neither is the second tenable. For argument (if any) must be said to be this : in a family joint or re-united, whatever property belongs to one member belongs also to others ; therefore although the right therein of a deceased member is extinguished, the right of the survivors subsists therein ; hence the devolution on them is reasonable, but not the supposition of any other heir. But this is not consistent with reason. For even when the family is joint or re-united, the right of each member extends to a fractional portion though unascertained ; but neither an exclusive right of each nor a joint right of all the members together extends to the entire property, as in that case there would be multiplicity in assuming many times the accrual and extinction of right.

Moreover, from the previously cited texts of Gautama and others, such as,—“ Union (of husband and wife) arises indeed from marriage,”—it appears that the wife's right to the property of the husband arises from marriage : but there is no authority for assuming that that right ceases on the death of the husband if he was unseparated or re-united, and that it does not cease in other cases. When there are sons &c , then it is only on the authority of the texts propounding their right that the extinction of the wife's right is assumed. It cannot, however, be contended, that in this case too, the extinction of the wife's right is to be assumed by reason of the texts laying down the right of a re-united or unseparated brother. Because any text to that effect is not met with ; and because it cannot be ascertained by reason of the fallacy of mutual dependence ; for if it be established that the wife's right is extinguished on the death of the husband who was re-united or unseparated, then the texts laying down the right of the brother may be held to be relative to that case ; again if it be established that the texts laying down the

right of the brother is relative to that case, then the extinction of the wife's right may be assumed. Hence it is that in the texts of Yogisvara, Vishnu and others, only the default of sons is mentioned, but not separation nor the absence of re-union. It cannot be argued that these are, by implication, enumerated, inasmuch as partition has previously been mentioned and re-union has subsequently been treated of; for if that were so, then the term 'sonless' also need not be set out, since when the primary and the secondary sons have been separately mentioned to be heirs, then also it may appear by implication that the text is relative to a different state of things. The term 'sonless' may become significant by interpreting it to indicate the following restriction, namely, that these alone are, in this very order, heirs to a sonless person: and this interpretation is equally applicable to the other two cases (namely, jointness, or re-union). But it does by no means follow that the text is relative to the case of separation. It has already been said that the text regarding re-union is intended for laying down a special rule when the right of the brother takes effect, and not for excluding the wife and the like.

" Besides, if the texts of Sankha, Likhita, and others related to a brother who was joint or re-united, then what is the meaning of this, *viz.*, that the estate of such a sonless person devolves on a brother of that description, and in his default the parents shall take? Then again the question arises, whether the parents who have been separated and not re-united, or who are joint or re-united shall take? The first alternative is not tenable; for such parents are debarred by the wife, how then in default of brothers, can their right be signified in preference to the wife? Neither is the second alternative tenable; for the text would be useless, since no one disputes that the parents who are joint or re-united are entitled to take. Moreover, as in the case of the estate of one who was separated and not re-united with the father or the brothers, the father succeeds in preference to the brothers,—by reason of his being the author of (the deceased son's) existence, by reason of the declaration of identity (of father and son) as in the text,—'A man himself indeed is born as the son, the son is the same as the father himself,' by reason of the authority.

of the father over the person and property of the son, by reason of the deceased son's participation, through the union of oblations effected by the ceremony of *sapindikarana*, in the two oblations presented by the father to the grandfather and the great-grandfather, and by reason of the incompetency of the sons to present oblations in the *parva* occasions while the father is alive;—so it is reasonable that he should succeed in other cases. Or there being no distinction between jointness and re-union, the co-equal right (of the father and the brothers) is reasonable, but it is not reasonable to say that the father's right takes effect on failure of the brothers.

“Moreover, the adjectives ‘unseparated’ and ‘re-united’ cannot properly be applied to (both) the parents, for there cannot be partition with the mother, and so the adjective ‘unseparated’ (as applied to the mother) would be meaningless. Hence it follows that there can neither be re-union (with the mother), for it must be preceded by partition. Accordingly Vrihaspati says,—‘He who having been separated dwell together again through affection with the father, brother or the paternal uncle is called re-united with him.’ From this text it appears that the father, brother and the paternal uncle who are from their birth likely to be united as regards the property acquired by the father and the grandfather, they alone may become re-united when having been once separated they annul through mutual affection the previous partition with an agreement to the effect that the wealth which is mine is thine and what is thine is mine, and remain as one householder as before in commensality and undivided (in any transaction). Those, however, who are unlike these are not to be considered re-united by reason of the mere union of property: for if that were so, then the term re-union would be applicable to a joint stock company of traders. Accordingly the term re-union is not applied to brethren who manage their estates holding them joint for the sake of convenience, but are without the stipulation based upon affection. Hence it becomes difficult (for the adversary) to maintain the mother's right of succession in spite of the brother.

“Hence it is perfectly consistent to hold that in de-

fault of descendants down to the great grandson, the widow alone does without distinction succeed to the entire estate of her deceased sonless husband. But it is not reasonable to assume what is not specified in any text, namely, that the wife succeeds if the husband was separated and not re-united. Jitendriya and others also support the same view. In default of descendants down to the great grandson, she too confers a great amount of spiritual benefit upon the husband by performing the *srāddha* and the like. This appears from the following text of Manu, viz.,—‘The wife alone shall offer oblations to him and take his entire estate.’ Vyāsa also declares,—‘When the husband is dead, a chaste wife leading a life of austerities and performing daily oblations shall respectfully offer handfuls of water to her husband and shall day by day worship the gods and entertain the guests; also being devoted shall daily worship Vishnu, shall present gifts to worthiest Brāhmanas for the purpose of augmenting religious merit; and shall, oh auspicious! observe the various kinds of fasting enjoined by the Śāstras: oh sweet-faced! the wife who is constantly devoted to a religious life saves both herself and her husband abiding in the other world.’—Hence, because the wife also saves the husband from the infernal regions, and because by leading a vicious life through indigence (the wife who is) half the body of the husband by reason of the declaration to that effect, causes the husband also to fall, for the same is indicated in texts like the following,—‘whose wife drinks wine &c.’—therefore the estate being taken by her becomes beneficial to the husband; consequently the wife’s succession to the husband’s estate in preference to all others is consistent with reason.

“The construction to be put upon the texts of Sankha and other sages is, however, far-fetched:—The estate of a person who is deceased and sonless, *i. e.*, destitute of male issue down to the great-grandson, let the eldest wife, *i. e.*, the wife that is preferable, take; in her default and in default of the daughter and the daughter’s son, let the parents take; in their default it goes to the brothers: the term *tadabhāve* (in his, her or their default) occurring in the middle (of the text, of Sankha and others) may be con-

strued with what precedes or with what follows, for such a construction is not incorrect, and the reason for it has previously been mentioned. The text of Nárada, namely,—‘If any one of the brothers die without issue &c.’—and other texts to the same effect are relative to a wedded wife other than a *patní*; since in these texts the term *stri* is used, whereas in the text of Sankha and others, the term *patni* is used. And it has been previously shewn that all married women do not acquire the status of the *patni*. Accordingly in another text of Nárada himself, namely,—‘But the king adhering to his duties shall (take the estate and) allow maintenance to his *strís*; this is pronounced the law of inheritance excepting in the case of Bráhmaṇas,’—it appears from the use of the term *stri* that maintenance only is to be allowed to the wives of a person other than a Bráhmaṇa, who do not hold the rank of the *patni*. But the wives of a person other than a Bráhmaṇa, who hold the rank of the *patni* are entitled to take the entire estate of the husband. Thus Vrihaspati says,—‘The estate of the Kshatriyas, Vaisyas and Súdras who are sonless and destitute of the *patni* and brothers, the king shall take, for he is the lord of all.’—The term ‘destitute of the *patni* and brothers’ indicates the failure of all the heirs down to the fellow-student; because the order of their succession being settled, the king cannot intervene between them, and because in the previously cited text, Vishnu having mentioned the heirs down to the fellow-student, says,—‘in their default it goes to the king excepting the property of a Bráhmaṇa.’ ”

13. As to the above view (of Jímútaváhana) what is to be remarked is this. What is the objection to the reconciliation, namely, that the texts of Nárada Sankha and others are relative to jointness or re-union? Is it in conflict with any reason, or is it in conflict with any text? There is not, however, conflict with any reason, for there is not any reason against it. But rather there is a reason in support of it. Since when the husband dies unseparated, he had no (specific) share at all, then what will the wife take? And if re-united, then although his share had been specified, it was lost by reason of the accrual of a com-

mon right over again. Nor can it be argued that there is certainly his undefined share although it is the subject of a common right. For although this be admitted, still on the demise of one by whose relation the right became common, the succession of him alone whose right subsists is proper, but not the supposition of the accrual of another's right. If it be said that, by reason of the text of Gautama, viz.,—"From marriage indeed arises union as regards religious acts, their fruit and the acceptance of chattels"—the wife's right accrues to the husband's share though undefined, wherefore then is the extinction of that right assumed while she is alive? The answer is:—Her right is only fictional but not a real one: the wife's right to the husband's property, which to all appearance seems to be the same (as the husband's right) like a mixture of milk and water, is suitable to the performance of acts which are to be jointly performed, but it is not mutual like that of the brothers; hence it is that there may be separation of brothers, but not of the husband and wife; on this reason is founded the text, namely,—“Partition cannot take place between the husband and wife; therefore it cannot but be admitted that on the extinction of the husband's right the extinction of the wife's right is necessary: hence it is to be assumed (by you) either that the wife's right accrues to the property of the husband who was joint or re-united (on his demise), or that the existing right of a co-sharer who is joint or re-united is not common; the latter alternative alone cannot but be admitted (by you) by reason of simplicity. Nor can the wife herself be a party to partition, as there is no authority establishing the same. Nor can it be said that these very texts (which lay down the wife's succession) establish it. Because it is not settled as to what case these texts are applicable, and because these may as well be taken to refer to the estate of one who was separated and not re-united. Accordingly the fallacy of mutual dependence (mentioned by Jīmūtvāhana, p. 160) is out of the question. Since the fallacy cannot interrupt the enquiry (into the subject to which the texts are applicable); and since when the enquiry is over, the subject to which the texts are applicable has already been determined.

As for what has been said in the passage, namely,—“For even when the family is joint or re-united &c.” (p. 160); that is not capable of weakening our contention. For even if the right of each member be admitted to extend to a fractional portion though unascertained, still it is established by a different reason, that the texts (laying down the wife’s succession) cannot refer to a case of re-union. Nor can it be argued that there is no authority for holding that the texts, such as,—“The wife and the daughters &c.”—refer to the estate of one who was separated and not re-united, while there is nothing to that effect in the texts themselves. Because there being no other reasonable reconciliation of the conflicting texts of Nārada and others, the inference of a meaning, which is based upon the reason which has previously been set forth is itself the authority. And it will subsequently be stated that no other reconciliation is reasonable.

Nor can it be argued that just as (you say that) there are no terms used in the text itself to show that it is relative to the estate of a person separated and not re-united, because it appears by implication that the text,—“The wife and the daughters &c.”—refers to that case by reason of partition having previously been dealt with, and by reason of re-union having been subsequently treated of: that therefore for the same reason the term ‘sonless’ also ought not to have been mentioned (in the text), because the text,—“The wife and the daughters &c.”—being set about after having discussed the subject of partition between the primary and subsidiary sons, it would have appeared, (by implication) that the text refers to the estate of a sonless person. Because the term (‘sonless’) is used for the purpose of indicating a meaning which has not been expressed by Yogisvara in any other text, but which meaning is mentioned in other Institutes by texts like—“The *aurasa* or legitimate son alone is the master of the paternal wealth,”—and—“Not brothers nor parents but the sons are entitled to the property of the father.” Otherwise there might be a doubt that as on partition during the father’s lifetime or after his demise, his wives are entitled to shares even when there are sons, so the same would be the case in this instance too. If it be said

that there is no occasion for such a doubt, the text being declared after the subject of partition amongst sons has been finished; then in other Institutes the declaration of separate texts, such as,—“The *aurasa* or legitimate son alone is the master of the paternal wealth,”—and—“Not brothers nor parents but sons are entitled to the paternal wealth,”—for establishing the absence of the right of the wife and the rest when there are the legitimate and subsidiary sons,—would be altogether useless. And the ground on which this objection may be removed (by you), namely,—that in the Institutes of law, a proposition though it may be deduced by means of the rules of interpretation is still for the purpose of clearness separately enunciated,—may with greater reason be applicable to a single term (viz. ‘sonless’). If it be said that wherefore have not the terms ‘separated’ and ‘not re-united’ also been for the sake of clearness inserted (in the text of Yājñavalkya to qualify the ‘sonless person’)? The answer is, because the sages had their own independent will. Besides, agreeably to the maxim that when there is an effect (in the shape of erroneous knowledge) its reason is investigated,—where there is a separate text of law embodying a meaning which is deducible by the rules of interpretation (from other texts) then, because what is so deducible ought to be maintained, therefore it is said that the separate text is intended to elucidate the same so that the text may not be considered useless.

As for what has been said, namely, that the text,—“Of a re-united (co-heir), however, a re-united (co-heir)” —is intended to lay down a special rule when the succession opens to brothers, and not to exclude the wife &c.;—that too is erroneous; for it is opposed to the term ‘however;’ and because in that part of the Institutes (of Yājñavalkya) each succeeding text is put by way of exception to what has previously been laid down; hence the term ‘however’ has been inserted in every text, and the text—“An impotent &c.”—(which succeeds the above text) is declared embodying an exceptional rule for excluding, by reason of impotence and the like, from inheritance all the sons and the rest who have previously been declared to be heirs. Accordingly, in the *Mitāksharā* these texts have been introduced and explained in this way by Vijnānesvara.

In the passage "Besides &c." (p. 161)—the right of the parents in default of brothers, as laid down in the text of Sankha and Likhita has been refuted (by Jímútavahana) having put his argument in an alternative form. That too is very weak; for our view cannot be questioned in that way, inasmuch as, like you, we can as well by reversing the order explain that text to be relative to parents who are separated and not re-united.

As for what has been said (p. 161) in the passage "Moreover &c."; that is to be passed by, as being of the same kind with the preceding.

As also for what has been said (p. 162) in the passage "moreover &c.";—that too is not a valid objection, because although the adjectives (unseparated and re-united) be not applicable to the mother (included under the term 'parents') still they may properly be construed with the father (comprised by the same term). But in reality, though directly there can be no partition with the mother, still re-union (of the mother), preceded by the particular stipulation based upon affection, may take place with sons, since she too may get a share by the choice of the father at a partition during his lifetime, and since participation (of a share) by her at a partition after the demise of the father is distinctly declared. Nor can it be argued that this is contrary to the text of Vrihaspati, namely,— "He who having been separated &c."; that hence it is said by the author of the Mitákshará that re-union does not take place with any person indifferently, but with the father, brother or uncle, and the above text is cited by him in support of this view. Because, if that were so, then re-union with the daughter's son and the like, which is recognised by the practice of all people, would become improper. Therefore of those only amongst whom there may be mutual partition, the mutual union preceded by it (partition), and based upon the particular stipulation, is re-union, and not by the mere mixture of each other's property as in the case of traders. This is what is intended by the text of Vrihaspati, but not the exclusion of the mother and the like. For if the exclusion of the mother &c. were the purport of the text of Vrihaspati, then the objection would arise that the text embodies a prohibition

in the shape of an injunction, which is liable to three exceptions. It is for this reason that the particle 'or' is repeated in the text of Vrihaspati to show that no value is to be attached to the enumeration. So in the Ratnākara, Chandesvara says,—The particle 'or' shows that no importance is to be attached to the enumeration; hence we get what is recognised by all people, namely, the re-union of one dwelling together after partition with the paternal uncle's son who was a co-sharer (before partition). Also Váchaspati says to the same effect. As for what he (Váchaspati) says, namely, that re-union is, by reason of simplicity, defined to be only the union together of those who had separate properties; the fact of there having been previous partition is not the condition of it nor is mutual assent its foundation:—that is not tenable; because it is opposed to the term 'again'; and because the term re-union would be applicable even to partition, for if right by birth be not admitted, then on (the occasion of) partition there is union of those having distinct properties: otherwise, if it be said that both (the definitions) being deducible from the text, the one maintained by the other side is equally valid, then it would exclude the re-union with an ascendant such as the father, although such re-union is recognised by all people. Also the author of the Mitāksharā by saying "not with any person indifferently," intends not to exclude the mother and the like, but only to lay down the restriction, that re-union must be preceded by partition and based upon the particular stipulation, and so to exclude the union consisting in the mixture of chattels in any way.

As for what you have said, namely, that the object of the text, viz.,—"Of the re-united (co-heir), however, a re-united (co-heir) &c."—is to provide for special rules governed by the circumstance of re-union, the fact of being uterine, and so forth,—(rules) which are to apply when the succession opens to the brothers:—that, however, is very unreasonable; since there is no reason why that text should not be applicable to other gentiles such as the father. And this will be discussed at length where that subject (re-union) itself is dealt with.

Hence there is no defect (attributable to the reconciliation made by us) in the shape of a conflict with any reason.

Nor can it be argued that there is a conflict with the text, on the ground that when he (Vrihaspati) has (in his text p. 159) qualified the re-united person also by the adjective "devoid of the wife and the father," then it follows that the right (of a brother) to the estate of re-united brothers takes effect only in default of the wife and the father, in the same way as in default of male issue. Because the succession of the wife to the estate of her re-united husband is expressly forbidden by Nārada in the text,—“The sages hold that amongst the re-united brethren, however, that share (which would go to the husband on partition) she is not entitled to.” Also in the reading of this text, as adopted in the Kalpataru, namely,—“The share of one of the re-united brethren, however, is ordained to be theirs alone”—the exclusion of the wife and the like certainly follows from the term ‘alone.’ Nor can it be argued that if the text of Nārada, namely,—“Among brothers if any one die &c.” (p. 142)—be, by virtue of the context, interpreted to refer to a case of re-union, then there would be tautology, since the same thing is expressed in the text,—“The sages hold &c.”; hence, because the term ‘*stri*’ is used in this text (of Nārada) and the term ‘*patni*’ is used in other texts (which lay down the succession of the wife in preference to the brothers &c.), therefore the reconciliation which alone is preferable is that the latter texts refer to the *patni* or the lawfully wedded wife, (and the previous text of Nārada, to other wives). Because the objection of tautology is of no effect, for what are intended to be laid down (in the first text of Nārada) are only the impartibility of the wives’ peculiar property and their maintenance, and this subject is introduced by repeating what has been previously ordained (in the second text); and because it would be unreasonable to prohibit the succession of the other wives to the estate of their husband, as their succession cannot follow from texts like,—“The wife and the daughters &c.”—in which the term *patni* is used. Again, agreeably to your opinion, the term ‘through covetousness for the heritage’ in Vasishtha’s text, which qualifies

the term 'appointment' would become unaccountable; for if the wife be first of all entitled to take the estate of the husband, who is destitute of male issue, without distinction arising from jointness separation or re-union, then how can there be the acceptance by the wife of appointment through covetousness for heritage, that it is prohibited? Agreeably to our opinion, however, by virtue of the texts of Nārada and others, the wife has no concern with the estate of the sonless husband while there is a brother joint or re-united, but her right may arise through a son alone, hence the acceptance of appointment through covetousness of inheritance may take place, and so it is prohibited. Nor can it be argued that inasmuch as in your opinion a wife other than a *patnī* is not entitled to the inheritance, her acceptance of the appointment, proceeding from covetousness of wealth is prohibited, and not what we say might have happened (but for the prohibition); Because the *patnī* alone being premised there, it would be unreasonable to say that it refers to a wife other than the *patnī*. Accordingly Dhāresvara and others have set forth this very text of Vasishṭha as an authority for holding that the text,—"The wife and the daughters &c."—refers to a *patnī* willing to accept the appointment. Hence, there is the prohibition of the wife's succession to the estate of the re-united husband, by virtue of the texts of Nārada and Vasishṭha; there is, again, the prohibition of even the uterine brother's succession to the estate of a re-united brother, when there is the wife, by reason of the declaration in the text of Vrihaspati namely,—“This is the law regarding the estate of a person who is childless and destitute of the wife and the father:” this conflict which necessarily arises, and ought to be any how got rid of by referring the texts to distinct cases, but which has not been got rid of by others, is thus reconciled,—Although it would follow, regard being had to the subject treated in the context, that the term 're-united person' is to be supplied as the substantive to which the adjective 'destitute of the wife and the father' relates, still it is opposed by the necessity of the adjective referring to one not re-united, by reason of the contradictory texts of Nārada and others; because the context cannot lead to a conflict of precepts.

Nor can it be said that since the pronoun 'this' relates to the law of succession to the property of a re-united person, with regard to which a particular rule is laid down in this part of the text, (viz. " 'This is the law &c.'"), therefore the adjective 'destitute of the wife and the father,' like the adjective 'childless' qualifies the re-united deceased (co-sharer); that hence the conflict is not between the precept and the context, but between the two precepts. Because, though the pronoun relates to the succession to the estate of a re-united (co-sharer,) still (the meaning may be taken to be) 'this' same law of succession, which obtains with regard to the estate of a re-united co-sharer, is applicable even to the estate of one not re-united who is destitute of issue, and has not the wife or the father surviving him, (that is to say) let not a uterine brother, however, take the estate of a deceased childless brother, who was separated and not re-united, when there is the wife or the father, but let the wife or the father take: the proposition may be reasonably explained in this way. Thus the word *cha* also is to be explained as suggesting that the term 'not re-united' which is not expressed is understood. Hence also, if the subject be taken to be disjoined by this proposition relative to the estate of a brother not re-united, then also the use of the term 're-united' becomes significant, in the succeeding text, namely,—“Of the re-united, however, if any one &c.”; otherwise it would be useless, for the same meaning would appear here too from the context. Accordingly in the third chapter (of the *Mīmāṃsā*) it has been held while dealing with the topic of the *nivīds* (or invocations of gods at the time of offering sacrifices to them) that the putting-on of the upper garment (which is subsequently enjoined) is not subservient to the chanting of the hymns for kindling the holy fire, by reason of the topic of these hymns, which is separated (from the topic in which the putting-on of the upper garment is enjoined) by the different topic of the *nivīds*,—forming a minor topic; but is subservient to the whole sacrifice of *Darsa-paurṇamāsa* which is the comprehensive topic (and includes the minor ones): and it is maintained by Bhatta that the subsequent attributes (of the hymns,

called *kāmyas*) are enjoined by repeating the hymns for kindling the holy fire, on account of their distance, in the same way as the twelve propitiating hymns. But in reality, the succession of the sister, in default of a uterine brother, to the estate of a re-united brother, is indicated by the text,—“if there be any sister &c.”,—and this alone which immediately precedes is referred to by the pronoun ‘this’ occurring in the sentence “this is the law &c.”: and in this interpretation there is no conflict whatever. It has been so explained in the Chandrikā also.

The succession, however, of the widow to the entire estate belonging to her sonless husband who was unseparated is opposed to what is declared by Kātyāyana; for he says,—“But when the husband dies unseparated, the wife is entitled to food and raiment; or (*tu*) she gets a portion of the estate till her death.”—The particle *tu* bears the sense of ‘or’; hence the meaning is this:—Either she may directly receive food and raiment, or till her death, *i. e.* during her life, she may get so much share of the property as is sufficient for her maintenance and for the performance of necessary religious ceremonies which a woman is competent to perform. By reason of the declaration “a portion of the estate till her death,” the position that the widow gets the entire estate of the unseparated husband, fails. Nor can it be argued from the use of the term *strī* (in the above text), that this text refers to a wife other than a *patnī*. Because the adjective ‘unseparated’ would be meaningless; and because it is ordained that a sonless wife other than a *patnī* is entitled only to maintenance, even when the husband was separated. Accordingly Vrihaspati having said (in the previous text, p. 135) “even when partition has been made,”—goes on to declare,—“Must allow (her) subsistence, or if she choose, a share of the field.” This text has been explained in the Smritichandrikā, thus:—The term ‘subsistence’ includes food and raiment; wealth sufficient for the same, or agreeably to her own choice a share of the field equal to that purpose, must be allowed to a widow other than a *patnī* who is entitled to the estate of the husband, by the brother &c. taking the estate: the term ‘must’ shows the necessity of giving the allowance. To this very subject refers the

following text of Nārada,—“ All the chaste widows should be maintained with food and raiment, by the eldest (brother of the husband), or by the father-in-law, or by any other gentile”—*i. e.*, whoever takes the husband's estate: maintenance is to be allowed by reason of succession to the estate.

By the term ‘chaste’ (in the above text of Nārada) it is shewn that, in all (the texts), the maintenance of the chaste widows alone is intended. But that too, even the *patnis* that are unchaste, are not entitled to, by reason of what is ordained in the latter part of the text of Nārada, previously cited (p. 143), viz.—“ but if they behave otherwise, the brothers may resume their allowance,”—and in other texts. Accordingly also Vrihaspati says that what has been given by the father-in-law &c. to the chaste for their maintenance should not be resumed even by other kinsmen, thus—“ But such immoveable or other property, as has been given by the father-in-law to the wives (of his sons) can, on no account, be resumed by the kinsmen here.”

But even what has been given to those that prove to be of a different character may be resumed. This is declared by Kātyāyana,—“(A woman) complying with the wishes of the venerable protector, is entitled to enjoy the allotted share: if she does not comply with their wishes, then she should be reduced to the livelihood of a slave. She who is bent upon injurious acts, is shameless or spendthrift or adulterous, is not entitled to even woman's property.”—By the expression ‘is not entitled,’ two meanings are conveyed, namely, that even what is sufficient for maintenance should not be given, and that even what has been given should be resumed from one that proves to be such.

As for the text of Sruti, namely,—“ Therefore women are devoid of the senses (*anindriyās*) and incompetent to inherit,”—and for the text of Manu based upon it, namely,—“ Indeed the rule is that women are always devoid of the senses and incompetent to inherit;”—these are both to be interpreted to refer to those women whose right of inheritance has not been expressly declared. Haradatta, also, has explained (these texts) in this very way, in his

commentary on the Institutes of Gautama, called Mitákshara. But some (commentators) say that the term 'incompetent to inherit,' implies censure only, by reason of its association with the term 'devoid of the senses.' This is not tenable; because it cannot but be admitted that the portion, namely, 'incompetent to inherit' is prohibitory and not condemnatory, for it cannot reasonably be held to be an absolutely superfluous precept inasmuch as the taking of the heritage (by women) may take place under the desire (for property). But the portion 'devoid of the senses' is to be somehow explained as being a superfluous precept, and purporting the dependence (of women) on men; for the negation, what is contrary to the nature, meaning as it does of things, is objectionable. Hence what has been said above forms the best interpretation. The venerable Vidyāraṇya (*i. e.*, a forest of learning), however, has, in his commentary on the Institutes of Parāsara, explained the above text of Sruti in a different way:—'The term 'incompetent to inherit' indicates that the wife is not entitled to a share in case of her retirement to a forest; the term *anindriyās* (rendered above into 'devoid of the senses') embodies the reason for the same; for it appears from the text *viz.*,—"The *soma* juice indeed is the *indriya*,"—that the term *indriya* signifies also the *soma*, hence those that are not entitled to it are *anindriyās*, *i. e.*, not entitled to taste the *soma* juice: the text being laudatory of the retirement of the wife into a forest (on the death of the husband).

Thus ends the discussion of the wife's right.

PART II.

§ 1.—The daughter's succession and the reason for the same. 2.—The reason as stated by Jímútaváhana excluding the barren and widow daughters noticed and criticized. 3.—The opinion that the appointed daughter alone succeeds, is criticized. 4.—The order of succession amongst daughters. 5.—A text of Vrihaspati explained by the author of the Smritichandriká. 6.—The plural number in 'daughters' in Yájñavalkya's text explained.

1. In default of the wife, 'the daughters' are entitled to take the estate of a sonless person who was separated and not re-united. Accordingly Manu says,—“As a man is himself so is his son, a daughter is alike to a son; when there is himself in the shape of a daughter wherefore should any other take the estate?” Also Vrihaspati says,—“A daughter like a son springs from every limb of the father; therefore why should another person take the estate of the father?” Here it is to be observed that although a daughter is directly begotten by the father, still by the terms 'alike to a son' and 'like a son,' a daughter is declared to be similar to a son, inasmuch as the constituent elements of a son's body are derived mostly from the limbs of the father, and those of a daughter's body, mostly from the limbs of the mother; for it is so established in the Institutes of law as well as in Physiology by passages like the following,—“A male child is generated when the virile seed exceeds, and a female child when the uterine blood prevails.” The term 'himself' (in the text,—‘when there is himself in the shape of a daughter’) signifies, similar to a son who is even as the father himself by reason of the text,—“Indeed a man is himself born as a son;” “when there is himself in the shape of a daughter,” means, in preference to a daughter.

It may be asked that although the reason as set forth in the above texts indicates the daughter's succession to the estate on failure of the legitimate or *aurasa* son, still on what principle does the succession of the daughter take effect in default of the subsidiary sons and the wife? The answer is, that that too has clearly been set forth by

Nārada for the benefit of the dull; thus he says,—“In default of the sons, however, the daughter (succeeds) by reason of similar lineage;”—this text again has been explained by Nārada himself, thus,—“A son as well as a daughter are both perpetuators of the father’s lineage.” The intention is this: Both the son and the daughter are the parents of the father’s descendants called (respectively) the *pañttra* or the son’s son and the *dauhitra* or the daughter’s son; hence their capacity for perpetuating the lineage being similar, the daughter too, like the son, has the right of succession. But a son’s son and a daughter’s son are not equal in themselves, hence the equality is intended to have reference to their acts. The acts again do not consist in liquidating the debts or taking the unobstructed heritage, for a daughter’s son has no concern with these while there is a son’s son, by reason of the texts, viz.—“The debts are to be liquidated by sons and son’s sons,”—and—“Therein the ownership of both the father and the sons is equal,”—the latter text being relative to the grandfather’s property. Hence the acts here are spiritual ones, namely, the performance of the *śrīddhus*, by reason of the text of Viṣṇu, namely,—“In the performance of the funeral obsequies of the ancestors a son’s son and a daughter’s son are alike.” Thus a daughter that confers only spiritual benefits through the instrumentality of her son is inferior to a son that renders benefits by means of his sons and confers spiritual as well as temporal benefits. Nor can it be said that thus a daughter who is begotten by a man himself is nearer than the wife, and as such is entitled to take the estate in preference to the wife. Because the wife, who by her companionship assists the husband in the performance of the ceremonies enjoined in the Vedas such as the consecration of the sacred fire, and who renders both spiritual and temporal benefits by being the means of lineage, and by being the instrument of satisfying the human end called desire, and who is extolled as half the body of the husband,—is certainly superior to a daughter. Hence the term ‘in default of the sons’ is to be taken to indicate the failure of the wife also, by reason of the previously cited (Pt. I, § 4) text of Viṣṇu and this text of Yogisvara (Pt. I, § 1).

Although the father who is the object to whom funeral oblations are addressed by the son, and who as such conduces personally to the spiritual benefit of the son, is nearer than a daughter, and hence the text, viz.—“The father or the brother shall take the estate of a sonless person”—should properly be applied, previously to the daughter’s succession; still she is preferable by reason of the proximity of body as ordained in the text,—“when there is himself in the shape of a daughter &c.”,—and it is in her default that the above text is to be applied, because from the use of the particle ‘or’ (in the above text), it appears that no stress is intended to be put on the order.

2. Jímútaváhana, however, while discussing the daughter’s succession, says,—“Since the perpetuating of the lineage is set forth as the reason for her succession; and since, of the descendants he who offers oblations benefits the deceased, but he who presents no oblation does not confer any benefit, and there being no distinction between the failure of offspring and having offspring other than those that conduce to the spiritual benefit; hence a daughter who has or who is likely to have male issue is entitled to the inheritance; and consequently the opinion of Dīkshita is to be accepted, viz, a daughter who is barren or who is widow or who is mother of daughters alone, and as such, is not likely to have male issue, is not entitled to succeed.”

This too is open to criticism. Since he himself maintains the preferential right of the maiden daughter in the passage,—‘First of all the maiden daughter alone succeeds to the estate of the father,’—upon the authority of the following text of Parásara, namely,—“Let the maiden daughter and in her default the married daughter take the property of a sonless deceased person,”—and of the following text of Devala, namely,—“And to the maiden daughter shall be given the father’s wealth (and) nuptial property.” But at that time there is no certainty that she will give birth to male issue; and since what has been set forth as the reason for her succession may reasonably be taken to be intended to indicate only the greater proximity. Moreover he himself shows exceptions to what

he holds to be the reason by laying down the succession of a daughter who has or who is likely to have male issue on failure of the maiden daughter. Therefore, agreeably to what we have said, the reason (as set forth in the texts) is to be explained to intend proximity.

3. Dhāresvara, Devasvāmin, Devasata and others, however, in order to avoid a conflict of the texts ordaining the daughter's succession with the following text, viz.—“The father or the brothers shall take the estate of a sonless person,”—say, that the texts establishing the daughter's succession (in preference to the father &c.) refer to the appointed daughter (*puttrikā*); in her default, however, the father and the rest are heirs agreeably to their order.

This is very unsound. Since the appointed daughter is placed in the category of subsidiary sons by the following text of Yogisvara, namely,—“The legitimate son is one born of a lawful wife: similar to him is the *puttrikā-suta* (an appointed daughter or her son)”—and by the following text of Vasishṭha, namely,—“The son of an appointed daughter is known as the third (subsidiary son);”—and since, by reason of the text of Manu, namely,—“Not brothers nor the father but the sons (primary and subsidiary) take the estate of the father,”—an appointed daughter, like the other subsidiary sons such as the wife's son, succeeds to the inheritance in spite of the wife; therefore, *a fortiori* it follows that she succeeds when there is no wife. Hence the above texts would be liable to objection on the ground of being unnecessary; if they be interpreted to refer to an appointed daughter; also it would be unreasonable to assume without any cause that the texts whereof the terms include all daughters without any qualification, are relative to a particular class (of daughters, viz., the appointed daughters). Moreover, the succession of the appointed daughter is declared (by Vrihaspati) in the text,—“A daughter, like a son, springs from every limb of the father &c.”—which is, agreeably to your contention, relative to the appointed daughter; the very same thing is again ordained by the very same sage in the text,—“An equal (daughter), espoused by (a person of) an equal (class), chaste and following the wishes

of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father;" hence it would have to be assumed in order to avoid tautology, that the one text is merely explanatory of the other: (in our opinion) however, there is clearly no tautology, the one text being general in its application and the other, particular. 'An equal daughter,' means, a daughter of the same class with the father: 'espoused by an equal' *i. e.*, by a person of the same class; Jímútaváhana says that this excludes those espoused by a person of a superior or inferior class, for it is ordained that a son born of her cannot perform the *śráddha* of the maternal grandfather of a superior class; but this is not acceptable, since a damsel of a superior class cannot be married by a man of an inferior class; therefore the term 'by an equal' is to be taken to be intended to exclude one married to a person of a superior class.

Nor can it be argued that Nárada has laid down as a general rule that all the daughters including the maiden, who are destitute of the father and the brothers, are incompetent to inherit the estate of the father, for he says,—"If she has a daughter, the paternal share is ordained for (the latter's) maintenance; she shall enjoy the share till her marriage; afterwards the husband shall maintain her,"—"she' (in the first line) relates to a sonless widow, as the text is declared with reference to her; hence if such a widow has a daughter then her paternal property is ordained merely for the purpose of her maintenance, consequently until her marriage she obtains her paternal share solely for her maintenance, 'afterwards', *i. e.*, subsequent to her marriage the husband shall maintain her; therefore also the residue of the property after defraying her maintenance during that time, may be resumed from her: the succession, however, of the daughter, to the father's property, with the power of disposing the same according to pleasure cannot at all be contended for. And that hence all the texts which establish the daughter's succession to the father's estate must be admitted to refer solely to the appointed daughter, as laying down an exception to what is declared in the above text; for otherwise if both the classes of texts referred generally to all daughters

it would be difficult to reconcile them by considering one as laying down a general rule, and the other an exception to it: therefore the opinion of Dhāresvara and others ought to be accepted as correct.

This contention would have been correct had the text of Nārada referred to the estate of a separated person. But having regard to what precedes and to what follows (the above text in the Institutes of Nārada) it clearly appears that this text refers to the property of one who was joint or re-united. Hence the texts which lay down the succession of the daughter without any qualification, to the estate of the father, in default of the wife, embody a rule not provided anywhere else which is applicable to the property of a separated person, but they do not provide an exception; consequently we do not see any reason whatsoever for considering these texts as referring to the appointed daughter alone.

Jīmūtavāhana sets forth the text of Devala, viz.—“To the maiden daughters shall be given &c.”,—as an authority for establishing the right of the maiden daughter to succeed to the entire estate of the father. But this is inconsistent with what is said by him in another place; for this very text is cited by him as an authority for allowing, on partition during life, to the maiden daughters, property sufficient for their marriage. That too has been refuted by us before.

4. Amongst the daughters also, first let the unmarried daughters take the paternal property: in their default the married daughters; amongst these also, first the unprovided ones, and on failure of them the provided ones; all in the same predicament, however, take the property dividing it equally. This rule is settled. Accordingly Kātyāyana says,—“The wife who is not unchaste, gets the wealth of the husband; in her default, the daughter if she be then unmarried.” Gautama ordains,—“Woman’s property goes to daughters unmarried and unprovided.”—‘Unprovided’ means indigent. Although ‘woman’s property’ is here mentioned, still the reason being the same, the text is applicable to paternal property also. But it is not reasonable to say that the term “un-

provided" means, destitute of offspring by reason of barrenness and the like; for her succession (in that order?) is not proper, inasmuch as she cannot confer spiritual benefit by means of sons.

5. The author of the *Smritichandriká* explains in the following way the previously cited text of *Vrihaspati*, namely,—“An equal (daughter) espoused by (a person of) an equal (class), chaste, and following the wishes of the husband, appointed or not (expressly) appointed, she takes the property of the sonless father:”—The first four adjectives refer to a daughter who takes the wealth after the wife; the remaining two adjectives qualify a daughter succeeding in preference to the wife. The substantive *puttriká* or the appointed daughter is to be supplied to the adjectives ‘appointed or not (expressly) appointed;’ the substantive ‘daughter’ is to be supplied to the other adjectives. The particle ‘or’ marks an alternative applicable to a determinate different state of things. Thus the meaning is as follows: The twofold appointed daughters are entitled, in preference to the wife, to take the property of the father destitute of legitimate sons; and the daughters who are qualified by the adjectives ‘equal’ &c. succeed on failure of the wife. Thus in default of the wife, when there are daughters provided as well as unprovided, married as well as maiden, then first, the maiden daughter alone succeeds, for the father was bound to maintain her; in her default, a married daughter who is unprovided (succeeds), for though the husband is bound to maintain her, still she is unprovided by reason of the husband’s inability to maintain her; on failure of her, even a provided daughter qualified by the attributes ‘equal,’ &c. takes the property agreeably to the propinquity previously mentioned.

Others, however, having admitted that the term ‘appointed’ means the *puttriká*, and the term ‘not appointed,’ any other daughter, and that the particle ‘or’ indicates indifference, explains without supplying any substantive that the whole text refers to any daughter, because the pronoun ‘she’ relates to the daughter without any qualification, (as used in the preceding text).

6. The plural number in the term 'daughters' (in Yājñavalkya's text p. 131) is used for the purpose of showing that the shares of the daughters of the same class are equal, but the shares of the daughters of different classes are distinct agreeably to the order of their classes.

Here ends the succession of the daughters.

PART III.

§ 1.—The daughter's son's succession.—2. The interpretation that the daughter's son means the appointed daughter's son, is rejected.—3. The daughter's son is not entitled to preference to the widow and the daughter.

1. On failure of daughters, the daughter's son (becomes heir); for the term 'also' (in Yājñavalkya's text,— 'and the daughters also,'—p. 131), indicates the inclusion of what is not expressed. Accordingly Vishnu says,—“On failure of descendants such as the son and the son's son, the daughter's sons obtain the property; for, in the performance of the funeral obsequies, the son's son and the daughter's son are alike.” The term 'on failure of the descendants such as the son and son's son,' indicates the failure of heirs down to the daughters. Also Manu says,—“ (If a daughter) whether appointed or not appointed brings forth a son by her marriage with a person of equal class; in him, the maternal grandfather has a son's son: he shall offer the funeral oblations and inherit the wealth.”—By the term 'has a son's son,' it is shown that as a son's son succeeds to his paternal grandfather's estate in default of sons, so the daughter's son in default of daughters. Also Vrihaspati says,—“As her ownership arises in the father's wealth, although kindred exist; in the very same way, her son also obtains the estate of the mother's father.” The meaning is:—‘As,’ *i. e.* through the funeral oblations offered by the daughter's son, the daughter becomes heiress of her father's estate; ‘in the very same way,’ *i. e.* through

the selfsame offering of oblations, the daughter's sons also become the owners of the maternal grandfather's wealth; 'although kindred,' i. e. the father and the like 'exist.'

2. It cannot be said that this text (of Vrihaspati) refers to the son of an appointed daughter; because the pronouns 'her' and 'her son' relate to the unqualified daughter mentioned before. Accordingly Manu also has declared the right of succession to the maternal grandfather's estate, of the son of a daughter without any qualifications, thus,—“The daughter's son indeed, shall take the entire estate of the (mother's) sonless father; he alone shall offer two oblations to the father and the maternal grandfather. Between a son's son and a daughter's son, in this world, there is no difference in law; since their mother and father are sprung from his body.”—The term 'father' is to be interpreted as the mother's father, accordingly the term 'maternal grandfather' is subsequently stated: or (it may mean) as he takes the entire estate of his own father so also of the mother's father who leaves no male issue, by reason of his personally performing the duties of his son; this is expressed in the passage, 'he alone &c.' the meaning is, to his own father and the mother's father: the terms 'mother and father' are not to be construed respectively, but the proper construction is that the son's son's father and the daughter's son's mother are sprung from the body of the proprior.

3. Some commentators, however, taking the text of Vishnu, viz.—“On failure of descendants such as the son and the son's son &c.”—in its literal acceptance, say that the daughter's son succeeds in preference to the widow and the daughter. This is to be rejected, because it would be in conflict with the text of Yagisvara, and because the inferiority of the daughter's son to the daughter is indicated also in the text of Vrihaspati, namely,—“in the very same way her son also.”

Thus ends the succession of the daughter's son.

PART IV.

§1.—Succession of the parents. 2.—A passage of the Mitákshará, cited, where the order of succession between parents is determined. 3.—A passage of the Smritichandriká cited, criticizing the Mitákshará. 4.—The Dáyabhága cited. 5.—Of the priority of the father. 6.—Objections against the Mitákshará, removed. 7.—The author's conclusion.

1. On failure of the daughter's son, 'the parents' (*pitarau*) take the estate, (vide Yājñavalkya's text, p. 131).

2. On this subject it is said in the Mitákshará:—Although the order in which the mother and the father succeed to the estate does not clearly appear (from the term *pitarau* in Yājñavalkya's text, p. 131,) since a conjunctive compound is declared to signify simultaneously the sense of the component words, and the uni-residual compound (in which one of the words is retained and the other is suppressed) is an exceptional form of the same; yet, as the word 'mother' stands first in the phrase whereof the uni-residual compound is the result, and is read first in the form other than the uni-residual, *viz.*, *mátáṭpitarau* or 'the mother and the father;' therefore the order of the sense, as deducible from the order of reading, should not be rejected, when there is an inquiry concerning the order of succession; hence the mother takes the estate of her sonless son, in the first instance; and, on failure of her, the father. Besides, the father is a common parent to other sons, but the mother is not so; hence her propinquity is the greatest. And Manu has, in the text,—“To the nearest *sapinda* the inheritance next belongs”—laid down the rule that even amongst the *sapindas* the *samánodakas* and the like, the greatness of propinquity determines the right of succession. Consequently when there is this question for determination, there is nothing to prevent the application of this text (of Manu) to the present case also.

3. Thereupon, the author of the *Smritichandriká* makes the following refined observations : There being no indication of order in the text,—“ There are two *sárasvata* sacrifices,” (or *sárasvatau*, one in honor of the goddess *Sarasvatí*, the other in honor of the god *Sarasván*)—it is established in the fifth chapter (of the *Mímánsá*) that the order of performing the sacrifices is regulated by the order of the hymns (called *yájigas*) ; but it is not established that any indication of the order arises from the uni-residual compound itself, (*viz.* *sárasvatau*). Similarly, in this instance too, other authority ought to be searched for establishing the order of succession ; if there be no other authority, then it is reasonable to say that both the parents take the estate, dividing it in equal shares, for, as in the conjunctive compound so in the uni-residual form, the conjunction of the two words is expressed. As for what has been said (in the *Mitákshará*), namely, ‘ that it is proper that the mother should succeed in preference to the father, by reason of her greater propinquity, inasmuch as the father is common to even the sons of the step-mother but the mother is not so ’;—that too is not consistent with reason. Since there cannot be greater or lesser propinquity of the mother and the father to their offspring ; for although the father may beget other sons, still he is equally with the mother, the parent of an offspring ; since causality (of the parents in begetting a child) cannot be considered to exist separately in each parent (but exists jointly in both.) Nor can it be argued that the estate if taken by the father may descend even to stepbrothers, but if obtained by the mother, it will go only to the whole brothers ; therefore the mother succeeds (in preference to the father). Because such propinquity being the standard whereby the succession of the brothers and sisters is determined, cannot reasonably be taken to be the criterion for determining the succession of the mother in preference to the father ; and because propinquity is of no consequence in this case, where co-equality is expressed by the uni-residual compound which is an exceptional form of the conjunctive compound. Indeed where the question concerning the order (of succession) arises, there propinquity determines the order, and not otherwise. Hence the right of the parents

being co-equal they shall take in equal shares the estate of a son without issue. This is maintained by Śrīkara. But it is not reasonable. For the joint succession of the father and the mother cannot take effect, inasmuch as the independent right of each of them appears from the texts—“The father shall take the estate of a sonless person,”—and—“Indeed the mother shall take the estate of a person who departs for heaven without leaving male issue;” just as when it appears that rice or barley is a means (of something) independently of each other, it does not follow that their mixture has the same effect. Some (commentators) say that the mother is entitled to succeed first, because she confers a greater amount of benefit by bearing the child by nursing it and by the like acts, and because it is laid down that,—“The mother is entitled to reverence a thousand times more than the father.” This too is nothing; since the father also confers benefits in various ways, by performing the initiations, by furnishing the means of maintenance, &c., and since it is contrarily laid down that—“Of these again the father is superior, because the seed is declared to be superior.” If the reverence alone due to a person had had any effect in determining the succession, then the spiritual preceptor would have succeeded even in preference to the father, inasmuch as it is declared that—“Of the parent and the preceptor of the Vedas, the father preceptor is superior;” and the paternal grandfather, the paternal uncle and the like would have succeeded in spite of the brother and the brother’s son.

4. Jīmútavāhana, however, says: “From the term ‘the parents’ or *pitarau* (pt. 1, sect. 1) it appears that the father is first in the order; since by the radical word *pitri* (whereof the dual number in the nominative case, is *pitarau*) the father is first suggested; and the dual number suggests that the term *pitarau* is the result of the uni-residual compound in which one word has been suppressed, but as this compound cannot reasonably be taken to be one of two similar words, (meaning two fathers,) therefore in conformity with what has been declared by Vishnu, Manu and others, it is ascertained to be one of two dissimilar words; and then the mother is suggested. Hence

what is said by Śrīkara, namely, that 'the mental apprehension of an order (of succession) can take place only when there is an expression of such order, hence the expression of order being wanting, the apprehension (of the same) cannot take place'; and the reverse order as maintained by Vijnānesvara—are not consistent with reason."

5. Hence when there is difference as to the order to be reasonably deduced from the term *pitarau* or 'the parents,' the order as declared in the text of Brihadviṣṇu ought to be accepted. And in that text it is first said that 'it devolves on daughters,' and it is then stated that 'if there be none, it belongs to the father; if he be dead, it goes to the mother.' The author of the *Mitāksharā*, however, certainly manifests a great deal of thoughtlessness when he first of all cites this text of Brihadviṣṇu, adopting the above reading, and then relying upon mere reason contrary to it, concludes that among the parents the mother succeeds in preference to the father. The daughter's son again being included in the category of 'daughters' has not separately been mentioned by Brihadviṣṇu, therefore it is to be observed that the default of daughters indicates the default of the daughter's son also. Hence the conclusion arrived at by many commentators such as the authors of the *Smṛitichandrikā*, the *Madanaratna*, the *Kalpataru*, the *Ratnākara* and the *Pārijāta*, is that it is only in default of the father that the mother succeeds to the estate of a son without male issue.

Vāchaspati, however, reads the text of Brihadviṣṇu in the following way, namely,—'if there be none, it goes to the mother; if she be dead it belongs to the father'—and thus comes to the same conclusion as in the *Mitāksharā*. But this is undoubtedly erroneous, as this reading is not met with in any other work.

6. Also the argument in the *Mitāksharā*, namely, "as the word 'mother' stands first in the phrase whereof the uni-residual compound is the result"—is said to be erroneous; for the rule that the term 'mother' must stand first, is not applicable to the phrase which is reduced to

the compound, since that rule is laid down by grammarians with regard to the compound, but not in respect of the phrase to which the compound is resolvable. We now proceed to remove this and other objections raised by others against the reason assigned by Vijnānesvara. The proposition, however, that a conjunctive compound signifies simultaneously the sense of the component words, has been refuted at great length in the *Bártika* and the *Tantraratna* while dealing with the subject of the construction of sentences. But as regards the construction with any other word in the sentence, the conjunction of the component words is grammatically conveyed by the conjunctive compound; hence in the passage, "the parents (*pitarau*) are heirs," although the grammatical construction (of 'the parents' with the other words) is simultaneous, still there can be no defect in the sentence even if there be in reality an order between the two parents. This being admitted by Śrīkara and all others, all this may be solved. Now since in the forms (of the compound) other than the uni-residual one, namely, *mátāpitarau* and *mátara-pitarau* or 'the mother and the father,' the term mother takes its place first; and since, if the complete and the uni-residual forms of the conjunctive compound had not been capable of conveying the same idea, the optional use of either form would not have been directed; therefore it should be admitted that by the uni-residual form also, the same idea is conveyed in the same order. And although the rule is not authoritatively laid down that the term 'mother' must stand first in the phrase into which the compound is resolvable, yet it is certainly established by the uniform practice of all commentators; since nowhere is the compound *pitarau* found resolved into the phrase 'the father as well as the mother,' but always into the phrase 'the mother as well as the father.' Hence by reason of the maxim that 'even a minute distinction may lead to a conclusion,' this too may effect the determination (of the order of succession). It may be that what has been said by the author of the *Mitāksharā* is with this intention.

Although the causality of the parents in the production of a child does not separately exist in each parent, still the greater propinquity of the mother, deduced from

the consideration that the father may be a common parent to other sons but the mother is not so,—has been said (by Vijnānesvara) with reference to that consideration alone. There are certainly the attributes of (the one's) being common and (the other's) being not common, arising from relationship and consisting (respectively) in the tardiness and the facility of realizing the notions conveyed by the (correlative) terms (father and mother); for it is so felt.

‘When no order is indicated by the grammatical meaning of the passage, wherefore then is an order in fact assumed?’—This argument of Śrīkara, however, which the authors of the *Smṛitichandrikā*, &c. also had to meet, is refuted on the ground that an enquiry into the order arises, inasmuch as the independent right (of each of the parents) is laid down in other texts.

7. All that remains is the conflict with the text of *Bṛihadvishnu*, which it is difficult to answer. That also we proceed to reconcile as far as we are able to do. Now we find that there are conflicting texts establishing the comparative reverence due to the father and to the mother. These must be reconciled by referring them to different cases. Thus, the following texts and others to the same effect establish that higher reverence is due to the mother; *viz.*—“The preceptor of the Vedas ten times more than the tutor, the father hundred times more than the preceptor, but the mother a thousand times more than the father, is entitled to reverence,”—and—“The mother is entitled to a greater degree of piety by reason of her bearing the child and nursing it”: while texts of *Smṛiti*, such as—“Of these two, again, the father is superior, because the seed is declared to be superior,”—and facts like the following related in the *Purāṇas*, namely—that *Parasurāma*, in compliance with the order of his father, beheaded his mother, and that *Rāma*, although prevented by *Kausalyā* (his mother) did, in obedience to the command of his father, renounce the throne and retire to the forest,—show that higher reverence is due to the father.

And the way in which these may be reconciled is this: When the father is endowed with all the qualities entitling

him to the greatest veneration, as is described in texts like the following one of Yogísvara, namely,—“A father is entitled to the highest veneration, who having performed the initiatory ceremonies, instructs the son in the Vedas ;” and when the mother is devoid of all those virtues which constitute chastity, such as obedience to the husband : then, of these the father is entitled to higher respect than the mother. If, however, the mother is like Arundhatí, endowed with all the virtues of chastity, and the father is merely the progenitor ; then in such a case the mother is indeed entitled to greater respect than the father. Likewise, from the story of Chirakáriká in the Mahábhárata also, this distinction appears as the purport of that story. Hence in this instance also, the succession to the estate of a son without male issue, which, as laid down in the texts of Manu and other sages, appears to devolve in the first instance to the mother according to some (texts), and to the father agreeably to others,—ought properly to be reconciled in this way alone. Thus, Manu says,—“The mother shall obtain the property of a son without male issue, and if the mother be dead, then the father’s mother shall take the estate :” Vrihaspati says,—“The mother shall take the estate of a deceased son who leaves neither widow nor son, or a brother (shall take) by her permission :” again Manu says,—“The father or the brothers alone shall take the estate of one leaving no male issue :” the text of Brihadvishnu, cited before, lays down that “if there be none, it belongs to the father ; if he be dead, it goes to the mother :” and in the text of Yogísvara is used the term “parents,” which, according to Vijnánesvara, signifies ‘first the mother and afterwards her the father,’ and according to others, the joint succession of both the parents, or the priority of the father. There being this diversity, (the reconciliation is, that) the mother succeeds in preference to the father, if she be entitled to greater reverence than the father ; but she is postponed to the father, if she be entitled to lesser reverence than the father. And it is reasonable that a mother who confers greater benefits than a father who does not provide with the means of maintenance and the like, should take the estate ; and that a father who furnishes with the means of maintenance

and the like, and consequently renders the greatest benefit by rearing and by providing with the means of subsistence for life, should take the estate (in preference to the mother). It should be particularly noticed by the learned, that it is thus that all the texts and all the commentaries become reconciled.

PART V.

§ 1.—Succession of brothers. 2.—Of whole brothers and half brothers.

On failure of the parents the brothers take the estate.

Although it appears from the text of Sankha and Paithínasi, namely,—“The wealth of a sonless person who departs for heaven goes to the brothers; if there be none, let the parents take &c.”—and from the text of Manu, namely,—“Or the brothers alone”—that the brothers succeed in preference to the father; and it appears from the text of Manu, namely,—“And if the mother too be dead, the father’s mother shall take the estate”—that the paternal grandmother is entitled to succeed in preference to the brothers: still in order to avoid a conflict with the texts of Yogísvara and Brihad Vishnu which lay down the order of succession, it is to be held that the above texts lay down merely their right of inheritance; and that with a view to intimate that there is no conflict with the above order, Manu and Paithínasi employ the term ‘or’ thus, “or the brothers alone” and “or let the senior wife take;” otherwise, if they were heirs of equal position the use of the particle ‘or’ would be extremely unreasonable. This is the opinion of the author of the Mitákshará and of many others.

But the author of the Kalpataru says:—When there are the widow and a brother, then the chaste widow who is competent to perform the funeral obsequies and the like, succeeds first; but one who is not so, succeeds after a brother and the father: but when there are the father and a brother, then the property which was acquired by

the father, grandfather &c., and which on partition was allotted to the son, goes to the parents if the son dies without male issue; but the property which was acquired by him without using paternal property devolves on the brother notwithstanding the parents.

But it appears to me that in the text of Manu, namely,—“if the mother too be dead, the father’s mother shall take the estate”—and in the text of Sankha and Paithīnasi, namely,—“if there be none, let the parents take”—and in the text of Devala, namely,—“Then the uterine brothers shall divide (amongst themselves) the heritage of one leaving no male issue; or else the equal daughters; or else the surviving father; the brothers of the same class, the mother or the widow, agreeably to their order: in default of all these, those kinsmen (*kulyas*) who dwell together shall take”—order is expressed by the terms ‘dead’ ‘in his default’ and ‘agreeably to their order.’ Hence it is not at all a perfect reconciliation to say that the texts of Yogisvara and Vishnu being alone declaratory of the order of succession, and the other texts being intended to show merely the right of inheritance, no objection can arise from the assignment of positions (to these heirs) in the latter texts, contrary to those in the previous ones. But as in the instance of the wife’s son and others, the conflicting order expressed in the texts of law has been reconciled with reference to their possession or want of good qualities and to their friendliness or animosity towards the legitimate (*aurasa*) son; so here too in the chapter on Partition of Heritage, the description of the sons &c. conferring benefits upon the father &c., or the description of the possession or want of good qualities, can have no other object, like the description of comparative propinquity. Hence any conflict of texts with regard to the order of succession is to be reconciled with reference to the possession or want of good qualities, and to the greatness or smallness of benefits conferred upon the proprietor. Any other reconciliation is not acceptable as being imperfect. Similarly in any instance in the sequel. Thus every thing is consistent.

2. Amongst the brothers also, first the uterine bro-

thers (succeed). Because it is laid down by Manu in the text,—“To the nearest *sapinda* the inheritance next belongs”—and by Vrihaspati in the text—“When one has many *jnātis* (or kinsmen,) *sakulyas* as well as *bāndhavas*; he who is nearest among these shall take the estate of one leaving no male issue”—that the greatness of propinquity is alone the criterion (of succession) in the absence of special provision; and the remoteness of half brothers is caused by their mother. But the term ‘brothers’ being used without any qualification, the half brothers succeed in default of uterine brothers. This is clearly stated by the author of the Sangraha, thus,—“If there be two classes of brothers, namely, whole brothers and half brothers; then the whole brothers take the estate notwithstanding the half brothers.”

Thus ends the succession of brothers.

PART VI.

§ 1.—Succession of the brother's son. 2.—Uterine brother's son succeeds in preference to a half brother's son.

1. In default of brothers, ‘their sons’, *i. e.*, the brothers’ sons are heirs. Nor can it be said that since by the term ‘likewise’ in the passage ‘likewise, their sons,’ similarity between the brothers and the brothers’ sons is indicated; and since it has been declared that—“Among those, however, whose fathers are different, the allotment of shares is according to the fathers;”—therefore on failure of the parents, let them both jointly take the estate. Because, for fear of a conflict with the text of Vishnu, the term ‘likewise’ is to be taken to convey the same meaning as the term ‘and.’ Otherwise, as the term ‘likewise’ might as well be construed with what precedes, wherefore could not the joint succession of the parents and brothers take place? If it be said that it does not take place by reason of its conflict with the text of Vishnu—the same may be said in this instance as well. And the meaning

of the text, "Among those, however, whose fathers are different &c."—is this: when on the death of a brother their right takes effect, *i. e.* when any brother dies without leaving male issue and the right of all the surviving brothers accrues to the estate left by him, but if prior to the partition of the estate any one amongst these also die, then his sons would have become entitled to equal shares with their uncles, but (agreeably to the above text) they are all to take that share only which their father would have taken on partition, and not each a share equal to that of an uncle. Because, while a brother is alive, his sons have no right to the estate of their uncle; since it is declared in the text of Yogisvara that "in the absence of the preceding one, every succeeding one is heir;" and since in the text of Vishnu, namely,—“On their default it goes to the brothers' sons,”—the failure of brothers is expressed, as the pronoun ‘their’ relates to the term ‘brothers.’

2. Amongst the brothers' sons also, the sons of the uterine brothers, by reason of their greater propinquity, succeed in the first instance; in their default, the sons of half brothers. And this is reasonable; because a son of a half brother presents the *pinda* to the (deceased) proprietor's father and to his own paternal grandmother, omitting the proprietor's mother, therefore he being inferior to a uterine brother's son succeeds after him. Nor can it be argued that inasmuch as the three ancestors together with their wives are the objects to whom the funeral oblations are addressed, therefore the rival mother and the like also are included. Because the terms ‘mother’ and the like signify primarily one's own parent, the father's parent, and the grandfather's parent; and these as such are declared to be the objects to whom oblations are offered; thus, it is ordained,—“The mother partakes of the funeral oblations consisting of food with her own husband; also the paternal grandmother with her own, and with her own the paternal great-grandmother.” The offering of oblations to the rival mother and the like, rather follows from what is declared in the text, *viz.*—“Those men as also women who die without male issue; to them also should be offered oblations addressed to a single indivi-

dual, but not such oblations as are presented on *parva* occasions." Besides, all persons beginning with the son are competent to perform the ceremony of the *śrāddha* in honor of the forefathers with their wives, and there are not always the rival mother and the like, therefore it is reasonable to hold that the rule of presenting oblations to the ancestors with their wives includes only the mother and the like, so that there might not be the objection of uniting what is constant with what is accidental.

Thus ends the succession of brothers' sons.

PART VII.

§ 1.—Of the gentiles; its meaning as in the *Mitākshara*. 2.—The same as in the *Śūritiehandrikā* and *Dāyabhāga*. 3.—Criticized. 4.—Gentiles consist of the *sapindas* and *samānodukas*; these terms explained. 5.—Cognates; three descriptions; maternal uncle &c. 6.—Preceptor and pupil. 7.—Fellow-student. 8.—The king. 9.—The *Brāhmanas*.

1. On failure of the brothers' sons, (the heirs are) the 'gentiles' (*gotrajas*) who are to be taken to be other than the father, the brother and his son that have been previously set forth, by reason of the rule of 'the bulls and the bees.'

Vijnānesvara says:—The gentiles are the paternal grandmother, the *sapindas* (or persons of the same family or *gotra* connected through the *pinda* or body), and the *samānodukas*, (or persons of the same family other than the *sapindas*). Of these the paternal grandmother succeeds in the first instance. Although it would appear from the text of Manu, namely,—“when the mother too is dead, the father's mother shall take the estate,”—that the succession of the paternal grandmother takes place immediately after the mother; still she cannot reasonably be placed between the settled series of heirs from the parents to the nephew: and there is no reason for postponing her further, in spite of her superiority (as set forth in the text

of Manu): hence it is only after her that the paternal grandfather and other gentiles succeed.

2. On this subject the author of the *Smritichandriká* says:—The term gentiles or *gotrajás* (or those descended from the *gotra* or family), being a uni-residual compound of similar terms, denotes males only, but not females. For a term is taken to be an uni-residual compound of dissimilar terms, when it is shewn to be so by the purport as understood from other evidence such as the association with another sentence, just as in the passage, “Bring two chickens, which will make a pair;” but there is no such evidence in the present instance. On the contrary, the association with the terms brother’s sons &c. shows that the male gentiles alone are intended. Besides, the succession of the widow, the daughters and the like being specially laid down, the text of *Sruti*, namely,—“Therefore women are devoid of the senses, and incompetent to inherit”—may be explained to refer to other women than these (with regard to whose succession there are special provisions); but in the case of the gentiles and so forth, the supposition of the term being a uni-residual compound of dissimilar terms ought rather to be rejected, in order to avoid a conflict with that text. Accordingly, while explaining the text of *Apastamba*, namely,—“The father during his life may divide the heritage among the sons,”—the commentator says, ‘may divide the heritage among the sons only, not among the daughters, they being females’; and then goes on to say,—Although here the term ‘sons’ may be made to include daughters, by considering the term ‘sons’ to be a uni-residual compound of sons and daughters, upon the authority of the Aphorism of *Páṇini*, namely,—“The terms brother and son (may be compounded in the uni-residual form) with the terms sister and daughter” (respectively); yet the males are heirs and not the females, by reason of the following text of *Sruti*,—“Therefore women are devoid of the senses, and incompetent to inherit.” The intention of the commentator is, that although there is authority for taking the term ‘sons’ to be a uni-residual compound of dissimilar terms, still in the instance under consideration, it is not taken to be so, by reason of conflict

with the text of Sruti and by reason of the absence of anything suggesting that purport.

Also Jímútaváhana says:—And Yájnavalkya makes use of the term *gotrajas* or gentiles for the purpose of showing that the daughters' sons of the father &c., who are descended from the same *gotra*, become heirs in the order of their nearness with reference to the offering of oblations; also for the purpose of excluding the wives of *sapindas*, they being not sprung from the same *gotra*. Accordingly Baudháyana, having in the previous text, said, "a woman is entitled to," declares,—“Not to the heritage, since a text of the Sruti ordains, ‘women are devoid of the senses, and incompetent to inherit.’” The construction is that a woman is not entitled to the heritage. The succession of the widow and the like is not opposed (to the above interpretation) inasmuch as that is expressly declared.

3. That is not good. Since in the texts of Manu and others, cited before, the succession of the paternal grandmother has expressly been laid down; therefore even if the text of Yogísvara be, consistently with those texts, considered to include her by taking the term gentiles or *gotrajas* to be a uni-residual compound of dissimilar terms, there would be no conflict with the (above mentioned) Sruti which may be held to refer to women other than the paternal grandmother.

Jímútaváhana, however, does, in that part of his work where he deals with the mother's succession, say,—“The paternal grandmother's succession takes place after the paternal grandfather and before the grandfather's descendants, like the mother's succession after the father. The succession of the paternal grandfather and grandmother has not been separately propounded by Yájnavalkya, inasmuch as the same is virtually declared by showing the mother's succession.” But in this part of his work, he says,—“The term *gotraja* has been used for the purpose of excluding the wives of the *sapindas*.” Thus he fails to observe that he contradicts himself. For in the text of Yogísvara, the absence of express mention of the paternal grandmother is the same as that of the wives of the paternal uncle

&c. ; so the text of Sruti, declaring incompetency to inherit is as well applicable to the paternal grandmother as to the wives of the paternal uncle.

Agreeably, however, to the interpretation put upon the text of Sruti, viz.—“Therefore women are devoid of the senses &c.—by the venerable Vidyāranya, which has previously been cited (p. 175), this text does not at all prohibit women’s right of succession : so there can neither be a doubt (as to their competency to inherit) nor an answer (to such doubt). But it should be remarked that how can that interpretation be accepted when it is in conflict with the text of Baudhāyana ? For although the term *indriya* may be taken in any of its acceptations, still there is nothing else (in the text of Sruti) to support women’s incompetency to inherit, and it cannot be held that the text of Sruti has nothing in it to support the position that women are not entitled to inherit ; hence it cannot but be held that the text of Sruti does prohibit women’s right of succession, inasmuch as otherwise the quotation (by Baudhāyana) of that text as establishing the position would be unreasonable : just as in the instance, “Therefore an unknown embryo being killed (a man becomes) murderer of a Brāhmaṇa.”

4. On failure of the paternal grandmother, the paternal grandfather and the other *sapindas* of the same *gotra* are heirs ; since the *sapindas* (or persons connected through the *pinda* or body) of a different *gotra* are included under the term *bandhu* or ‘cognates.’

Among these also, in default of the father’s descendants, the paternal grandmother, the paternal grandfather, the paternal uncles and their sons become heirs in their order ; in default of the paternal grandfather’s descendants, the paternal great-grandmother, the paternal great-grandfather, his (paternal grandfather’s ?) brothers and their sons ; similarly to the seventh (degree) the *sapindas* of the same *gotra* take the estate of a person without male issue.

On failure of the *sapindas*, the *samānodakas* (succeed). They comprise seven (degrees) above the *sapindas*, or all whose birth (from the same *gotra*) and (family) name are known. Thus Manu says,—“The *sapinda* (or consan-

guine) relationship, however, ceases in the seventh generation, but the *samánodaka* relationship extends up to the fourteenth (generation), or as some affirm to those whose birth and name are known. The term *gotra* signifies these (*i. e.*, the *sapindus* and the *samánodakas*).” It has already been shown that, in the text of Vishnu (p. 142) the term *bandhu* signifies a *sapinda*, and the term *sakulya* means a *sagotra*. The *samánodakas* also become heirs in the order of propinquity.

5. On failure of the *samánodakas* the ‘cognates’ or *bandhus* are heirs. The cognates are of three descriptions; the cognates of a man himself, the cognates of the father, and the cognates of the mother. To this effect is the following passage of the Smṛiti,—“One’s father’s sister’s sons, one’s mother’s sister’s sons and one’s maternal uncle’s sons are to be known one’s own cognates; the father’s father’s sister’s sons, the father’s mother’s sister’s sons and the father’s maternal uncle’s son are to be known the father’s cognates; the mother’s father’s sister’s sons, the mother’s mother’s sister’s sons and the mother’s maternal uncle’s sons are to be known the mother’s cognates.”

Amongst these also the order is, that, by reason of greater propinquity, first one’s own cognates, after them the father’s cognates, and after them the mother’s cognates.

In the text of Manu, namely,—“In their default, a *sakulya*, or the preceptor, or a pupil (becomes heir),”—the term *sakulya* includes the *sagotras* (*sapindas*?) and *samánodakas*, the maternal uncle and the like, and the three classes of cognates. Also in the text of Yogisvara the term ‘cognates’ or *bandhu* comprises also the maternal uncle. Otherwise, the exclusion of the maternal uncle and the like would be the result. And it would be extremely improper that their sons are heirs, but they themselves though nearer are not heirs.

6. In default of the cognates, the preceptor is heir. Although the preceptor is not mentioned in the text of Yogisvara, still the pupil has been mentioned; and it ought, by reason of propriety, to be held that the precep-

tor who is superior to him and nearer, is implied. Because the succession of a pupil on failure of the preceptor is expressly declared by Manu in the text,—“or the preceptor or a pupil,” and by A’pastamba in the text,—“If there be no male issue, the nearest *sapinda* inherits; in their default, the preceptor; failing him, a pupil.”

7. On failure of a pupil, the fellow student takes the estate; that is, he who received his investiture and education from the same preceptor.

8. If there be no fellow students, the king shall take excepting the estate of a Bráhmaṇa, by reason of the text of Vasishtha, cited before, which, after declaring the succession of all down to the pupil, says,—“in his default, it goes to the king excepting the property of a Bráhmaṇa,”—and by reason of the text of Manu, namely,—“In default of all those, however, the property shall go to such Bráhmaṇas, as are versed in the three Vedas, as are pure in body and mind and as have subdued their passions: thus, religious merit is not lost. The property of a Bráhmaṇa shall never be taken by the king: this is the settled law. But the wealth of the other classes, on failure of all (heirs,) the king may take.”

9. In default of all down to the fellow student, the wealth of a Brahmana is taken first by a *śrótṛiya* or such a Brahmana as is versed in the Vedas; failing him, by any Bráhmaṇa. Thus Gautama says,—“The *śrótṛiyas* shall take the estate of a Bráhmaṇa leaving no male issue.” But any Bráhmaṇa succeeds, as in the text of Manu the term Bráhmaṇa is used without any qualification. It is also declared by Nárada,—“If there be no heir of a Bráhmaṇa’s wealth, on his demise, it must be given to a Bráhmaṇa. Otherwise the king is tainted with sin.”



PART VIII.

§ 1.—Succession to the property of a hermit, &c. ; the text of Yājñavalkya explained. 2.—An objection stated and answered.

1. With reference to the estate left by a hermit, &c., an exceptional rule, excluding the (ordinary) heirs such as the son and the rest also the wife and the like, is propounded by Yogisvara, thus,—“The heirs of a hermit (*vānaprastha* or one who has entered the third order of life), or an ascetic (*yati* or one desirous of *moksha* or liberation from transmigration) and of a student (*brahmachāri*), are, in their order, the preceptor, the virtuous pupil and the spiritual brother resident in the same holy place.”

The term ‘student’ here, by reason of its association with the term ‘ascetic,’ means a lifelong student (i. e. one who has taken a vow to remain a student for life and not to enter into a married life): hence the estate of a person who has been leading the temporary life of a student (which every twice-born is enjoined to lead before becoming a householder) devolves on the parents and the like in the specified order, for such a person cannot have heirs from a son down to a daughter’s son.

The order mentioned in the above text is to be understood to be the inverse one. Accordingly the wealth of a deceased student goes to the preceptor; of an ascetic, to the virtuous pupil; of a hermit, to the spiritual brother resident in the same holy place.

The spiritual brother is one adopted as a brother; the term holy place signifies a hermitage, hence resident in the same holy place, means, resident in the same hermitage; the meaning is, one who is a spiritual brother as well as is resident in the same holy place.

The virtuousness of a pupil, however, does not mean good conduct. For the exclusion from inheritance, of even the son and the rest, whose conduct is bad, is established by other authority. And that will be mentioned.

But it is to be taken to consist in the capacity for understanding lectures on psychology, digesting the same and following its doctrines in practice.

The author of the Madanaratna, however, having cited the text of Vishnu, namely,—“The preceptor shall take the wealth of a hermit (*vānaprastha*), or the pupil,”—and thinking the order (mentioned in Yājñavalkya’s text) to be direct and not inverse, says that in default of the preceptor the pupil takes the wealth of a hermit.

2. If it be said :—It being established that the lifelong student and others have no concern with property, in texts like the following one of Vasishtha, namely,—“They who have entered into another order, are debarred from shares,”—the declaration, in the above text of Yājñavalkya, of the succession to their estate is not proper. Nor can it be argued that although their right of taking the heritage is forbidden by Vasishtha and others, still the above text establishes the right of succession to their property acquired by other means. Since it is ordained that, “A student and an ascetic both are owners of the prepared food (and of nothing else),” and since acceptance and the like (means of acquisition) are prohibited to students, and since the saving of property by an ascetic is prohibited in the text (of Gautama), namely,—“A mendicant shall have no hoard.”

The answer is, that it is not tenable. Since, by reason of the text, namely,—“(The hermit) may make a hoard of things sufficient for a day, a month, six months or a year; and in the month of Aśvina he should give away what has been collected,”—a hermit has certainly some property sufficient for food, &c.; the ascetic too has something such as clothes, books, &c., by reason of the text,—“An ascetic should wear clothes to cover his privy parts, and take the requisites for austerities (*yoga*) and the sandals;” the lifelong student also must have clothes and the like for the protection of his body. Hence the question occurring, who is to take these things belonging to them, after their death? the above heirs are declared to the exclusion of other heirs.

CHAPTER IV.

RE-UNION.

§ 1.—Equal distribution. 2.—Self-acquired property. 3.—With whom re-union may be formed. 4.—Succession to re-united property ; two couplets of Yājñavalkya explained ; Manu cited. 5.—Interpretation by Śrīkara. 6.—Same as in the Smṛitichandrikā. 7.—Same by Śūlapāni. 8.—Same as in the Dāyatattva. 9.—The wife's succession. 10.—The Sister. 11.—The *Sapindas*, &c. 12.—Sons re-united or not, equally succeed ; an exception regarding a son born after partition. 13.—Maintenance of the wife and daughters ; the marriage of the latter.

1. Now the partition of re-united property is considered.

On that subject, Manu says,—“Should those, who dwell together after having been separated, again divide their property ; in that case the distribution shall be equal ; there is no deduction for seniority.” Here, although it follows from the very restriction laying down equal distribution, that the mode of unequal division is to be rejected ; still the passage “there is no deduction for seniority,” is added in order to show that only the unequal distribution caused by seniority, &c., does not take place, but that there is certainly unequal division on account of the union of greater and less property.

Some, however, say that the unequal distribution owing to seniority, &c., must be made of the augmented portion (if any) of the re-united property ; but the division of the re-united property must be equal : with a view to indicate this the portion “there is no deduction for seniority”—has been added.

This is not tenable. For a distinction like this does not appear from the above text, since, from the passage “in that case the distribution shall be equal,”—it appears that the restriction as to equality is applicable to the accession also.

2. Just as in the partition of undivided property, so also in the partition of re-united property, the impartiality of what has been acquired by science, &c., without using re-united property, would equally have been the rule; but an exceptional rule has been laid down by Vrihaspati, thus,—“But if any one of the re-united co-heirs acquire property by science, heroism, &c., two shares shall be allotted to him, the rest shall be equal sharers.”

3. Many are of opinion that re-union may be formed only with the father, &c., but not with any other, by reason of the text of Vrihaspati cited before, namely,—“He, who being once separated dwells again through affection together with the father, brother or paternal uncle is called re-united.”

But we have shown at great length that the enumeration of the father, &c., is illustrative (not exhaustive).

4. Just as in the case of partition among undivided co-heirs, so also among those that are re-united, if any one die before partition is made, his sons shall take and divide amongst themselves their paternal share, by reason of the text,—“Among those whose fathers are dead (different?) the allotment of shares is according to their fathers.”

But if any one of the re-united co-heirs die without leaving male issue, then the succession to his estate would have devolved on the wife, &c., by reason of the text,—“The wife and the daughters also, &c.,” but in continuation of the passage “of a sonless deceased person,” (occurring in that text) an exceptional rule is laid down by Yogisvara in the following text, namely,—“But of a re-united (co-heir,) a re-united (coparcener shall keep the share, when he is deceased or deliver it if born).” The term ‘but’ shows that it forms an exception to what precedes. Thus the meaning is, that the estate of a re-united co-heir dying without male issue shall be taken by a re-united co-heir alone, and not by the wife or the like. Hence, Jímú-taváhana must be considered to have erred, who interprets the text to be applicable when, among the series of heirs to the estate of a sonless person beginning with the wife, the brothers’ right takes effect.

To this rule again, an exception is propounded (in the latter part of the above text),—"But of a uterine brother, a uterine brother, shall keep the share when he is deceased, or deliver it if born." This is to be construed with the preceding portion, namely,—“Of a re-united, a re-united.” Accordingly the meaning is as follows: A re-united uterine brother shall deliver the share of a re-united uterine brother, if born, *i. e.*, if he is born in the shape of a son, that is to say, shall deliver it to his son; or shall keep, *i. e.*, shall himself take the share (of a re-united uterine brother) when he is deceased, *i. e.*, not living even in the shape of the son, grandson, or great-grandson. If this text were interpreted without construing it with the two terms that precede, then it would be opposed to the fact of this text forming an exception to what precedes, which follows by force of the term ‘but.’ And it forms an exception to what precedes, in this way: when there are a uterine brother and a half brother both re-united, in that case the re-united whole brother alone is entitled to the property of a re-united uterine brother, and not the half brother.

When, however, a half brother alone is re-united, and a whole brother is not so, then they take in equal shares the property of a brother without male issue. This is declared (by Yogísvara) in the text,—“But a re-united half brother may take the property, not a half brother (not re-united); also the (brother) united (through uterus) though not re-united may take, not the (united) son of a different mother (exclusively).”—Here the term ‘not re-united’ is, like the eye of a crow, connected both with the preceding and with the latter part. So the term ‘united;’ and this term signifies, in the first part, united through the uterus, *i. e.*, a uterine brother; but in the latter part, re-united. The term ‘exclusively’ is to be supplied immediately after the term ‘son of a different mother.’ Hence the meaning of the text is this: A step-brother, though not sprung from the same mother, takes the property if re-united; but a step-brother does not take, if not re-united: therefore, by showing the existence and absence of re-union to be the cause respectively of the succession and non-succession of a half brother, what is

affirmed is, that the re-union of a half brother is the sole cause of his succession, and not his fraternity alone: likewise 'the united,' i. e., the uterine brother although not re-united succeeds, and *a fortiori* when re-united: and the son of a different mother, although united, i. e., re-united shall not exclusively take the property, but shall take together with a uterine brother though not re-united. The purport of the text is this: when the uterine brother is not re-united but the half brother is re-united, then because of the two attributes, namely, being a uterine brother and being re-united, each of which constitutes a cause of the right of succession, one is present in each, therefore both of them take in equal shares the property of a brother without male issue: should the uterine brother be re-united, then by reason of the combination of both the causes he becomes the preferable claimant, therefore he alone takes the entire estate.

Although by each of the restrictive rules laid down in the above texts of Yogisvara, the inefficacy of the other cause of succession is established, still for the sake of emphasis the same is expressed over again; for in both ways the same meaning may be expressed.

The masculine gender in the terms 're-united &c.' (in the above texts of Yogisvara) is not intended to be significant. Accordingly Manu declares the right of the uterine sisters also to succeed to the property of a re-united brother. Thus he, having premised partition among the re-united kinsmen, in the text,—“If those who are associated after separation make a partition again”—goes on to say,—“Of these, if the eldest or the youngest or any other be deprived of his share at the distribution, or any one of them die, his share shall not be lost; but his uterine brothers being assembled and united shall divide that equally; also brothers that are united and sisters born of the same mother.” The meaning is:—Among re-united brothers, if the eldest, the youngest or the middle-most, at the distribution, i. e., at the time of making a partition,—the termination of the word (*ansapradánatas*), which denotes any case, denotes here the locative case,—be deprived, i. e., become disentitled by reason of degradation or adoption of an order other than that of the house-

holder, or dies before partition ; his share shall not be lost, *i. e.*, shall be set apart : but it shall be delivered to his male issue in the first instance : failing them, the uterine brothers though not re-united, being assembled, *i. e.*, if gone to a different country returning thence, united, *i. e.*, assembled together ; also brothers, *i. e.*, half brothers that are united, *i. e.*, re-united, and the uterine sisters of the deceased shall divide, *i. e.*, take it after division, equally, *i. e.*, without inequality. Here Manu by declaring the succession of the uterine brothers and sisters, even if they are not re-united, and of the half brothers in case they are re-united, clearly expresses the very same meaning as is declared by Yogisvara.

5. On this Srikara says : When there are only re-united half brothers, then the precept, “ But of a re-united (co-heir), a re-united (co-heir) shall keep the share, when he is deceased, or deliver it if born ”—is independent of any other precept ; so is the precept, “ But of a uterine brother, a uterine brother, &c.,”—when there are only uterine brothers not re-united : but, when there are both a re-united half brother and a whole brother not re-united, if the two precepts be applicable, then both precepts take effect dependently upon each other. But it is not right that the same precept be operative independently of, and dependently upon, another precept ; for in that case there would be variableness in the precept. Just as in the seventh chapter (of the *Mīmāṃsā*) a different conclusion is made for fear of variableness in the precept, which would have been the consequence, had the operativeness of the precept, “ in these two the holy fire is kindled ”—been taken, in respect of the two of the four sacrifices, to be dependent on the option created by the prohibition embodied in the precept, “ the holy fire-place is not made in the *vaisvadeva*, &c. ” ; but independent, in respect of the other two sacrifices. Accordingly, when there are a half brother re-united and a whole brother not re-united, neither of the precepts is applicable ; and it would follow that no one could take the estate (there being no provision for this case). Hence it is to be held that the right of a re-united co-heir to succeed to the

property of a re-united coparcener, being declared in the text,—“But of a re-united (co-heir), &c.,”—the latter part, *viz.*,—“But of a uterine brother, a uterine brother, &c.,”—is set forth as forming an exception to that. Hence it follows that a half brother though re-united has no right, when there is a whole brother although not re-united.

This assertion is the consequence of not studying the principles of the topics of construction contained in the *Mīmāṃsā*. For it is not correct, that there is variableness in precept, merely because two precepts, which are independently applicable to some cases, become both applicable to some other case where the subjects of both (the precepts) are combined. Since, if it were so, then the precepts enjoining the bestowal of the whole wealth as gratuity to the priest in the one instance, and no gratuity in the other, which are respectively applicable independently of each other, if either the priest called *udgātri*, or the one called *pratistotri*, singly stumble (in passing from one apartment to the other, at the celebration of the sacrifice called *jyotiṣṭoma*),—would not be applicable (by reason of variableness, such as is maintained by you,) if both those priests should stumble at the same time; so there would be no conflict, there being no two propositions opposed to each other; hence the discussion in the topic of stumbling (in the *Mīmāṃsā*), must be held to be uncalled for. Therefore the variableness in precept is, when a precept becomes operative in one instance, independently of any opposition of a different precept, and in another instance dependently of such opposition: as has previously (p.150) been illustrated by the instance of the precept,—“Here they construct the holy fire-place, &c.” Otherwise, neither of the two precepts, *viz.*, “Shall touch with the hymn called *chaturhotrá* at the full moon,” and “Shall touch with the hymn termed *panchahotrá* at the new moon”—(in which the burnt-offering is meant to be the object of touch),—which are severally applicable to the sacrifices called *upāṃsu* (which takes place at the full moon) and *agnisomiya* (which takes place at the new moon) in the first of which the burnt-offering is curd consecrated to Indra, and in the second, milk consecrated to Indra,—would be applicable to a sacrifice which takes place both

at the full moon and at the new moon, although the burnt-offerings are combined.

As for his own interpretation, namely, that the rule,—“ But of a uterine brother, &c.”,—is an exception to the rule,—“ But of a re-united, &c.” :—that is extremely incongruous. For the converse (of the proposition that one is an exception to the other) may as well be asserted, there being no criterion for determination; and the mere fact of the one being placed after the other cannot lead to that conclusion. Again, the text,—“ But a re-united half brother, &c.”—has been said (by Śrīkara) to be explanatory of the text,—“ But of a re-united (co-heir), &c.” But to say this, is to say that that text is useless. Besides, the text,—“ But of a uterine brother, &c.”—being explained (by Śrīkara) to exclude a re-united half brother when there is a whole brother although not re-united, it is not applicable to the case where both a whole brother and a half brother are not re-united; consequently neither of them would be heir, or both of them would be equally entitled. If it be said that the very text,—“ But of a uterine brother, &c.”—is applicable to this case also, then the objection of variableness in the precept may be retorted on you; for, in one instance it becomes operative dependently of opposition of the text,—“ But of a re-united (co-heir), &c.”—and in another instance, independently of such opposition. Just as, if the precept directing the construction of the altar at a sacrifice with the *soma* plant, were applicable to the *dikshaniya* and the like sacrifices (which are performed at the full moon and the new moon and in which *soma* is employed), in opposition to the precept which generally directs the construction of an altar in the *darsapaurṇamāsa* sacrifice performed at the new and the full moons, and which extends to the above mentioned sacrifices, which are parts of that sacrifice; then that precept would be operative in those sacrifices dependently of opposition of the extending precept, and in others independently thereof: so there would be variableness in the precept; hence it has been concluded that the precept applies to those sacrifices with reference to which there is no other precept directing the construction of an altar.

But agreeably to the mode of interpretation adopted by us, the subjects of the two rules (of Yogísvara) being different, the objections of uselessness and of variability in precept cannot arise. There is no use in spinning out the matter.

6. The author of the Smritichandriká, however, says:—It appears from the terms ‘also’, ‘being assembled’ and ‘united’ in the text of Manu, viz.,—“Of these, if the eldest or the youngest &c.”—that the uterine brother and sister and the re-united half brother are jointly entitled to succeed: but it appears from the text of Yogisvara, that a half brother is not entitled to succeed when there is a re-united whole brother: hence there is a conflict between these two texts. With a view to avoid this conflict, some explain the text of Manu in the following way: ‘That unlost share shall be taken by those uterine brothers alone that are re-united, and not also by such uterine brothers as are not re-united; failing a re-united whole brother, all the uterine brothers, ‘being assembled’, *i. e.*, meeting together, and ‘united’, *i. e.*, with equal prominence, shall divide it ‘equally’, *i. e.*, in equal shares; in default of the uterine brothers, the uterine sisters; and in their default, the half brothers. This interpretation is to be rejected, as in it many terms are to be supplied (which are not in the text) and as it is far-fetched. Vijnánesvara has, in order to make the two texts consistent with each other, adopted a different reading of the text of Yogísvara, namely,—“But a re-united half brother may take the property, not a half brother (not re-united)” ; but nevertheless, the interpretation put by him is evolved out of his inner consciousness, for it is a forced one, by reason of the supply (of a term not in the text) and of the construction of the same term with different sentences, and is very obscure. Hence a reconciliation of the texts of Manu and Yogísvara, as bearing only the plain meanings, is to be effected only by referring them to different cases, and not by ringing changes upon the words (of the one text) to give out the same meaning (as the other). The same we proceed to show. The text of Manu shows the joint succession of brothers, whether re-united or not, and of sisters,

when the estate consists of both moveables and immoveables: but the text of Yogísvara refers to a case when the estate consists of immoveables only, or of moveables only. This follows from the text of Prajapati, viz.—“ But when the estate consists of chattels and other property it goes, however, to the re-united; but the land and house shall be taken by the unassociated (whole brothers?) according to the share.”—The term ‘chattels,’ by the rule of ‘the bulls and the beeves,’ signifies bipeds, quadrupeds and the like; ‘the re-united’ means, the re-united half brothers. The correct reading of the text of Yogísvara is, “A half brother though re-united does not take the estate of a half brother.” Hence, when there is only immoveable property or only moveable property, then, by reason of the text of Yogísvara, a uterine brother though not re-united takes, but not a half brother though re-united: when, however, there are both kinds of property, then agreeably to what is laid down in the text of Prajapati, the unassociated uterine brother and sister as well as the re-united half brother take in equal shares. This also is the meaning of the text of Manu.

This is not good. Since the defects of insertion (of terms not used in the text), forced construction &c., are not wanting in the interpretation put by you; and what is declared in the text of Prajapati is not in conflict with the the interpretation put by Vijnánesvara (on the text of Yogísvara). Accordingly the author of the Madanaratna, adopting this interpretation, cites this very text of Prajapati in support of it. But agreeably to your interpretation, there is rather the defect of tautology unavoidable in the text of Yogísvara, for (agreeably to your reading) it is in the first part said—“A half brother though re-united does not take the estate of a half brother,”—and the very same thing, neither more nor less, is expressed in the last part, namely,—“not the re-united son of a different mother.” And although an interpretation involving the defect of tautology, might even reluctantly be accepted for the purpose of making the text consistent with the text of Manu; still it would be improper to adopt a meaning which is liable to the objection of multiplicity for assuming another radical revelation.

7. Sūlapāṇi, in his commentary on the Institutes of Yājñavalkya, says (while interpreting the above texts which are read by him in a different way):—A half brother though re-united shall not take the property of a half brother; the uterine brother alone though not re-united shall take, but not a re-united half brother. If the reading be, “But a re-united half brother may take the property, not a half brother,” then the meaning is that a half brother being a half brother, may not take the property though re-united. This text shows the succession of an unassociated whole brother, hence there is no defect of tautology.

This, however, is of the same nature with what is said by Śrīkara. The author of the Ratnākara, however, says that the reading (of the text of Yājñavalkya), as found in the Kalpataru, is “shall not take the property of a half brother,” but this must be a copying mistake, inasmuch as the reading found in the copies of the Institutes of Yājñavalkya, and in the commentaries such as the Mitāksharā, the Pārijāta and the Halāyudha, is—“not a half brother, may take the property;” and the interpretation of that text, (in these commentaries), are in accordance with that reading.

8. The author of the *Dayatattva*, however, says:—“But when there are a half-brother re-united, and a uterine brother not re-united, and when there are a whole brother and a half brother both re-united: then two questions arise, which of the two is to succeed in each case.

“As to the first, it is said ‘A half brother &c.,’ which signifies; let a half brother, if re-united, take, but not a half brother merely as such: but a uterine brother though not re-united may take; for the term, ‘uterine brother,’ which occurs in the preceding text is also to be construed with the latter proposition. Therefore when there are an unassociated uterine brother and a re-united half brother, they both succeed; because the equality of the relation of re-union, and of the status of a whole brother, is expressed by the first part of the text.

“As to the second, it is ordained ‘and not the son of a different mother who is re-united,’ the meaning is that

when there is a whole brother re-united, the son of a different mother, though re-united shall not take, *i. e.*, the re-united whole brother alone shall succeed; since though they are equally re-united, still the whole brother as such is preferred."

This is in conformity with what is said in the *Mitákshará* and the like, but it discloses great want of skill in interpretation.

9. The authors of the *Smritichandriká* and the *Madanaratna* say:—When, however, the father or the uncle is not re-united, then the unassociated half brother succeeds; in his default, however, the unassociated father; failing him, the wife. Accordingly *Sankha* says—'The wealth of a sonless person who departs for heaven, goes to the brothers; in their default, let the parents take, or the senior wife.' The meaning is,—The property of a deceased sonless re-united (person) goes, in default of a re-united (coparcener) to an unassociated half brother. Hence this text may also, as it is, be relative to the estate of a re-united person.

The author of the *Mitákshará* and others say that this text refers only to re-union, consequently there is no inconsistency in the succession of the parents and the wife on failure of the brothers.

It is stated in the *Smritichandriká*:—The term 'senior' has been employed in the text of *Sankha* for the purpose of indicating the possession of virtues such as the control of passions, not for the purpose of excluding the middlemost or any other junior wife. The term 'in their default' should have been used over again, but in its stead, the particle 'or' has been used, for the effect is the same. Since, the term 'or' marks an alternative; but in the present instance there cannot reasonably be an alternative with reference to the ownership which is a determinate thing; for it is a rule laid down by the *Sástras*, also established by reason, that 'An indeterminate affirmation is not made with reference to a determinate thing'; therefore, here the term 'or' indicates an alternative with reference to 'default'; hence the result is the same. Accordingly the order is this: in default of the brothers,

the father; in his default, the mother; in her default, the senior wife.

In the Madanaratna, however, it is said that the mother succeeds in the first instance; and then the father. The intention being, that it follows from the principle set forth in the Mitákshará, there being no text against the application of that principle to the present case, like the text of Vishnu relative to the estate of a person separated and not re-united. Accordingly, on account of the text of Vishnu it has been held in that treatise, in the same way as in the Smritichandriká, that the term 'parents' in the text,—“The wife and the daughters also &c.,”—means that the father succeeds in the first instance, in his default the mother. We have already dealt with this at great length.

Hence it appears that the above text of Sankha being in conflict with the text,—“The wife and the daughters also &c.,”—is taken to be relative to partition after re-union, in order to avoid the conflict. The order of the heirs, which is laid down in the text, “The wife and the daughters also &c.,”—and which is founded upon a principle and is relative to separate property,—is opposed by the order laid down by texts of law with reference to the present case. In this order, there is no principle; hence this order rests entirely upon the authority of the texts of law. Also Nárada says,—“But when the husband is dead, the wives, who are destitute however of (the husband's) brother, father and mother, and all the *sapindas* shall divide the (whole re-united) property agreeably to shares.”—The meaning of this text is:—“The wives’ (*bháryás*) i. e., the *patnis*; ‘who are destitute of brother, father and mother,’ means, in case the brother father and mother of the husband do not exist. By deviating from the rule regarding the conjunctive compound, agreeably to which the father and mother who are entitled to greater respect than a brother, ought to have been placed first in the compound *abhrátri-pitri-mátrikás* (rendered above into ‘destitute of brother, father and mother,’) and by combining the words in the reverse order, Nárada intended to show that the estate of a re-united sonless person goes to the brother in the first instance, in their default to the father, in his default to

the mother, and in her default to the virtuous wife. Thus it is to be observed that the wife of a re-united person succeeds first, not in default of the legitimate and the subsidiary sons (only) but on failure also of re-united (coparceners,) whole and half brothers, father and mother. The meaning of 'all the *sapindas* &c.,' is this; those other than the brothers, father and mother, who are *sapindas* of a re-united person destitute of male issue,—such as the brother's sons &c.,—shall, on his death, divide their own property which was re-united by their father and the like with the property of that sonless person, with his wives, 'agreeably to shares', *i. e.*, allotting the brother's share to the nephews and the husband's share to the wives, and so not modifying the shares.

10. On failure of the wife, the sister gets the share of a sonless re-united person. Thus it is ordained by Vrihaspati,—“ But if there be a sister, she is entitled to get a share of it, this is the law regarding the estate of a person destitute of issue, also destitute of the wife and the father,”—the term 'also' (*cha*) suggests, “ also destitute of the mother.”

11. On failure of the sister, the mere (*i. e.*, unassociated) *sapindas*, that is, the nearest *sapindas* shall divide the estate left by a re-united person, agreeably to shares, *i. e.*, shall get the estate in the order of propinquity as declared by Manu in the text,—“ To the nearest *sapinda*, the inheritance next belongs;” since the order of succession among these has not been expressly declared. Thus the same sage (Vrihaspati) declares,—“ If the deceased have no issue, nor wife, nor brother, nor father nor mother, then all the *sapindas* shall divide his property agreeably to shares.” “ His property” signifies the property of a re-united person; “ If the deceased leave no issue &c.,” means, if the deceased be destitute of those (heirs) the order of whose succession to the re-united estate has expressly been declared.

But it is to be observed that in default of the *sapindas* the estate of a re-united person, like the estate of a person separated, goes on his death to the *samánodakas* and the

like in the order previously mentioned agreeably to the degree of propinquity. For there is no special text of law relative to the re-united estate, declaring the order of succession on failure of the *sapindas*.

12. If it be argued that as by reason of the text a re-united brother and the like succeed to the estate of a re-united person in spite of the wife and the like, so by virtue of the same text the re-united sons alone should inherit the estate of the father when there are both re-united and unassociated sons. The answer is that the argument is not tenable: since the term 'sonless' occurring in the previous text, is to be construed with this text; hence the death of a re-united person *without male issue*, is the cause of the succession (of a re-united co-heir); therefore when a re-united person leaves male issue, then the text,—“But of a re-united (co-heir) &c.”—cannot apply, since the circumstance of his being without male issue is wanting; consequently, in this instance too, both descriptions of sons are equally entitled to take the father's share by reason of the text,—“The sons shall on the demise of the parents, divide their estate and debts in equal shares.” But only whatever remains after the enjoyment by a person re-united with his son, of that share which was previously allotted to him (on partition,) shall be separately adjusted; *i. e.*, whatever share would belong to the father at the time, shall be taken by the sons, dividing the same. Nor can it be contended that let not the term 'sonless' occurring in the previous text be construed with the text,—“But of a re-united (co-heir) &c.” Because it would follow that even as regards the property of a re-united brother or the like who is not without male issue, his brother or the like will take his share to the exclusion of the male issue; and this would be opposed to the immemorial custom of all countries. And because if the text “But of a re-united &c.” were relative without distinction to a person who has male issue as well as to one who is destitute of male issue, then this text could not reasonably be said to form an exception to the text,—“The wife and the daughters also &c.”—which is relative only to a person destitute of male issue; consequently the above conten-

tion is contrary to the term "but" which marks an exception. Nor can it be argued (admitting the construction of the term 'sonless' with the text regarding re-union) that agreeably to the rule laid down by the learned, namely, "An adjective becomes significant if it may reasonably be applied, and if without it there would be inclusion of things not intended to be included,"—this adjective (properly) refers only to one who is re-united with a brother or the like, for it becomes exclusive; and not to one who is re-united with his son, for as that which is to be excluded is wanting, its application would be unreasonable. Because in the absence of two separate propositions if the precept embodied in one proposition be operative sometimes in connection with the adjective and sometimes without it, then in consequence of the two-fold meaning of the same proposition caused by its construction and non-construction with the adjective, there would be variableness in the proposition consisting in the variableness in the precept. Besides, ownership in the property of the father or other ancestor is to be held to be caused by sonship &c., alone, if not attended with degradation and the like disqualification, but not also if attended with re-union; by reason of multiplicity: and as the sonship &c., belong equally to all (the male issue,) whether re-united or not, therefore the succession, to their property, of all the sons and the like without distinction is proper. Nor can it be said, that right (of the sons &c., as such) to the property of the father and other ancestors, ceases by partition. Because (if that were so) then it would follow that when all the sons are separated and not re-united, then the wife &c., will become heirs as in default of male issue; and because the right of the father and son to each other's property is on the contrary laid down by A'pastamba and Eārīta, thus they say,—“(The father) may, in his lifetime divide the property and retire to a forest or adopt the order befitting an old man or may divide a small portion and retain the greater portion himself; and if he be pinched, may resume from them.”—“The order befitting on old man,” means mendicancy (or the fourth order of life); ‘be pinched,’ means, be reduced for want of food.

But if a son be born after partition, then (agreeably to what is said above, also) the sons who have been previously separated would have been entitled to the father's property, but they are debarred by the text of Vrihaspati, namely,—“Those born before partition are not entitled to the share of the parents; nor one born after it, to the share of a brother. Whatever is acquired by a father separated from the son, belongs entirely to one born after partition; those born before partition are declared to be not entitled. As in the property so in debts also, in gifts, pledges and purchases, they have no claim on each other, except for acts of mourning and libations of water.”

13. The heir to the estate of a re-united person must maintain his wives and support his daughters till they are married as well as perform the ceremony of their marriage. This is declared by Sankha and Nārada after premising re-union,—“If any one of the brothers without issue die or enter a religious order, let the rest divide his wealth, excepting the wife's separate property. Let them allow a maintenance to his wives until the end of their lives, provided they preserve unsullied the bed of their husband; but if they behave otherwise, the brothers may resume their allowance. If he leaves a daughter, her paternal share is ordained for maintenance, she shall get her portion till marriage; afterwards the husband shall maintain her.”—“If they behave otherwise” means, if they do not preserve unsullied the bed of their husband, *i. e.*, if they be of bad character; the prefix *á* in *ásanskárít*, (rendered into ‘till marriage’,) signifies inclusion, hence the celebration of marriage also is included.

Thus ends the partition of re-united estate.

CHAPTER V.

WOMAN'S PROPERTY.

PART I.

§1.—Woman's property enumerated. 2.—The term *strīdhanam* bears no technical meaning. 3.—The terms 'gift before the fire' &c., explained. 4.—The amount of maintenance allowed to females. 5.—The power of females over their property. 6.—Males have no power over woman's property; maintenance may be exacted by the wife, if not wicked. 7.—Husband's power over the wife's property in the event of distress. 8.—What was promised by the husband to his wife must be given by his sons; sons cannot divide the mother's property during her life.

1. Now, with a view to explain the partition of *strīdhanam* or *woman's property*, its nature is first determined.

On this Manu says,—“What is given before the (nuptial) fire, what is presented in the bridal procession, what is bestowed in token of affection, and what is received from the brother, the mother or the father; these six-fold are declared to be *strīdhanam*.”—The term ‘six-fold’ is intended, not as a restriction of a greater number, but as a denial of a less. Accordingly Yogisvara uses the term ‘the like’ in the text,—“What is given by the father, the mother, the husband or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage to another wife, or the like, is pronounced to be *strīdhanam*.” Also, Vishnu declares more than six sorts of woman's property; thus he says,—“What is given by the father, the mother, the son or the brother, what is received before the (nuptial) fire, what is presented on the husband's marriage with another wife, what is given by the *bandhus* or relations, and *anvādheyakam* or a gift subsequent to marriage; these are denominated woman's property.” Nārada says,—“What is received before the (nuptial) fire,

what is presented in the bridal procession, likewise a gift by the husband, what is given by the brother and the parents; these six-fold are declared to be *strīdhanam*.”—The term ‘six-fold’ is to be explained in the same way as in the text of Manu.

2. The term *strīdhanam* or woman’s property has been used (in the above texts) in its ordinary meaning, *viz.*, property whereof a woman is the owner, and not in a technical sense (as including only the enumerated items of property;) for when the ordinary meaning is acceptable, it is not proper to adopt a technical meaning. Accordingly Yogisvara has employed the term ‘the like’ on purpose to include what is acquired by the common means of acquisition, such as inheritance, purchase &c.

If it be said:—If it were so, then the exclusion of certain kinds of property from the category of woman’s property would be unreasonable; for, a woman’s ownership therein cannot be denied by reason of contradiction (with the above exposition;) thus, Kātyāyana says,—“Among these, what is given conditionally or what is given under collusion by the father, brother or husband; that is not denominated woman’s property.” ‘Condition’ is the restriction that this ornament or the like, which is given to you, is to be put on by you only on days of festivity &c., and not at any other time; what is given with such a restriction is “given conditionally.” “under collusion” means, with the intention of defrauding the co-heirs,—(as if saying)—‘This has been given to a maiden daughter, how can such property be partible?’ It is also said by the same sage that what is acquired by means of mechanical arts, also what is presented out of affection by a friend or the like does not become woman’s property, thus,—“But whatever is acquired by means of mechanical arts, also what is received through affection from any other; therein the husband’s ownership arises at that time; the rest, however, is pronounced woman’s property.” It is upon the assumption that the term *strīdhanam* is technical in its meaning, that what would, by reason of being given by a brother &c., be included, by the term *strīdhanam* is excepted (in the first of the above texts;) hence a technical meaning is intended

(by the above two texts) to be attached to the term woman's property, *viz.* that *stridhanam* means what is given by the father or the like excepting that (which is mentioned in the first of the above texts) or excepting what is gained by mechanical arts and the like (mentioned in the second text.)

The answer is : In the above texts the denial is, not of their being woman's property, but of its consequences, such as distribution (by her choice amongst her heirs,) &c. Accordingly in the latter text it is said, "therein the husband's ownership arises." The meaning is that the husband and not the woman has independence in dealing with such property. In the first text, however, the denial also of the woman's right is possible, by reason of the employment of the terms 'condition' and 'collusion'; and it is universally known that no right accrues to such gifts, by reason of the text of Manu, namely,—“Collusive mortgage and sale, collusive gift and acceptance, and wherever a condition (or fraud) is found; all these shall be prevented.” The following text (of Manu,) namely,—“A wife and a son, also a slave; these three are incapable of holding property: whatever they acquire belongs to him whose they are,”—is to be taken to refer, in the case of a wife, only to what is acquired by mechanical arts &c., by reason of the simplicity of the supposition that both the precepts are founded on the same radical revelation.

3. The terms 'gift before the nuptial fire,' and the like are explained by Kātyāyana, thus,—“What is given to women at the time of their marriage, near the nuptial fire, is proclaimed by the wise as the woman's property given before the nuptial fire. That again, which a woman receives while she is conducted from her father's house (to her husband's dwelling) is declared as woman's property under the name of gift presented in the bridal procession. Whatever, however, is given through affection by the mother-in-law or the father-in-law, or what is given on obeisance by touching the feet (of a woman,) is called an affectionate gift. Subsequent to marriage, however, what is received by a woman from her husband's family is called a gift subsequent, and so is what is like-

wise received from her own family. Whatever, however, is received as a price of household furniture, conveyance, milch-cattle and ornaments, is denominated fee or *sulka*. That which is received by a married woman or by a maiden in the house of her husband or of her father, from her brother or from her parents, is termed a kind gift."—The reading (of the text defining a kind gift) as adopted in the Kalpataru and other works, is "from her husband" (instead of 'from her brother.') The terms 'presents before fire,' &c. although they convey their derivative meaning, are still technical, inasmuch as they are applied only to the above descriptions of woman's property. It has been explained in the Madanaratna, that the price of household furniture &c., which is taken from the bridegroom or the like for giving (in marriage) the bride, in the shape of the bride's ornaments, is the fee or *sulka*. In the Mitákshará, however, it is said, that the fee or *sulka* is that which having been taken, the bride is given in marriage. But in both (the books), it is intended that the father or the like takes it on the understanding that it is to belong to the bride; because, otherwise, in the absence of her right thereto, the application of the denomination of woman's property to it, would be unreasonable. But Jímútaváhana having adopted a reading (of the above text of Kútyáyana, defining the fee or *sulka*) in which there is the word *karmi-nám*, workmen, instead of *karmanám*, acts, has explained the text in this way: "In order to have a work done by workmen on houses &c., i. e., by artizans, what is given as a bribe to a woman for inducing her husband or others (of her family who are the artizans), to do the work, is the fee or *sulka*. This itself is the price, as it is paid for her inducement." He has further said,—“Or the fee is what is described by Vyása in the text,—‘What is given to bring her to her husband's house is called the fee or *sulka*.’—The meaning is, that what is given by way of bribe or the like, to induce her to go to her husband's house is the fee or *sulka*.” Both these descriptions of property belong to the woman, for to her alone they are given; hence it is easy to understand the application of the name ‘woman's property’ to these, in the same way as to other kinds of woman's property.

A gift on supersession (*ādhivedanikam*) is what is bestowed on the first wife on the occasion of espousing another wife. This is described by Yājñavalkya, thus—"To a woman whose husband marries a second wife, let him give an equal sum as a compensation for supersession, if woman's property have not been given to her; but if any have been assigned, let him allot half."

4. Kātyāyana lays down a special rule regarding the grant of property by the father or the like, to females for their maintenance:—"The father, the mother, the husband, the brother or the *jñātis* or kinsmen of the same family, shall agreeably to their means, give to women *strīdhanam*, not exceeding two thousand, excepting immoveable property."—The meaning is, that property other than immoveables, extending to two thousand *kārshāpaṇas* shall be given according to the means. So also Vyāsa declares,—“But an allowance of property amounting to two thousand at the most shall be given to a female.” Kātyāyana by the term ‘not exceeding two thousand,’ and Vyāsa by the term ‘at the most,’ show that even a rich man is not to give more to women (whom he is bound to maintain). This restriction, however, is to be understood to apply to what is given every year, and not to an allowance once for all. Hence there is no incongruity, if the property given for maintenance for many years exceed this amount; for it is for maintenance that the gift is made, but it is not possible that that for the whole life can be covered by merely two thousand (*kārshāpaṇas*).

5. In the disposal of woman's property, however, females have not independence without the permission of their husband. This is declared by Manu thus,—“Women shall not make any disbursement out of family property which is common to many, or even out of their own property without the permission of their husband.”—Disbursement (*nirhāra*) means, expenditure.

But in the disposal of some kinds of woman's property, females have independence; this, Kātyāyana having described a kind gift, declares thus,—“The independence of women who have received a kind gift, is admitted (in

respect of it,) for it was given by them out of kindness, for their maintenance. With respect to a kind gift, the independence, at all times, of women is proclaimed in making sale or gift according to pleasure, even when it consists of immoveable property."

But as regards property given by the husband, they have independence in dealing only with property other than immoveables. This is declared by Nārada, thus,—
 "What has been given by an affectionate husband to his wife, she may, even when he is dead, consume it or give it away as she pleases, excepting immoveable property." The meaning is, that the wife can only enjoy the immoveable property given by the husband by dwelling on it, &c., but cannot make a gift, sale, or the like. Some are of opinion that the text of Kātyāyana also, *viz.*—"Let the sonless wife, preserving unsullied the bed of her husband &c."—refers only to immoveable property given by the husband, since (if interpreted in this way) it embodies the same precept as the text of Nārada. But what it refers to, has been discussed by us while explaining the text,—
 "The wife and the daughters also, &c." (p. 136 *et sequel*).

6. The males (of the family), however, have no power of disposal over any kind of *stridhanam*, inasmuch as they have no ownership in it: this is declared by Kātyāyana,—
 "Neither the husband nor the son nor the father nor the brothers can assume the power over a woman's property to take it or give it away. If any of these persons forcibly consume a woman's property, he shall be compelled to make it good with interest, and shall also incur a fine. If such a person having obtained her consent amicably, consume her property, he shall be required to pay the principal, when he becomes rich (enough to pay it). But if the husband have a second wife and do not show honor to his first wife, he shall be compelled by force to restore her property though amicably lent to him. If food, raiment and dwelling be withheld from the woman, she may exact her due supply and take a share (of the estate) with the co-heirs."

The meaning of the two couplets beginning with "But if the husband," is this: if the husband having taken the

wealth of one wife lives with another wife and neglects the first, the king shall forcibly compel him to restore that wealth; and if the husband does not supply her with food, raiment and dwelling, then these also or property sufficient for these, may be forcibly exacted by the wife. This also is to be understood to take effect when she is blameless; for a wicked woman is not entitled to obtain any sort of woman's property whatsoever, as is declared by the same sage,—“But a woman who is inimical, shameless, dissipator of wealth, or adulterous is not worthy of woman's property.”—By the expression ‘is not worthy’, it is indicated that what has been received by her may be forcibly taken from her: ‘inimical’ is one who is always engaged in committing acts against the will of the husband,—another reading is ‘impudent’ (*nirmaryádá* instead of shameless).

7. Devala says,—“Her subsistence, her ornaments, her fee or *sulka*, and her gains are the separate property of a woman. She herself exclusively has the right to enjoy it, her husband has no right to use it, except in distress. In case of consumption or disbursement without cause, he must refund it to the wife with interest.” ‘Subsistence’ or *vriddhi*, means, according to the *Smritichandrika*, what is given by the father or the like (relation) towards her advancement. In the *Madanaratna*, however, this is read as *vritti*, and is explained to mean what is given by the father or the like for subsistence. ‘Gains’ signifies what is received from any person, who makes the present for the purpose of pleasing Gauri or some other goddess: ‘without cause’ means, otherwise than in distress: ‘disbursement,’ means abandonment, *i. e.*, giving away; this is relative to gift and enjoyment that are not permitted by the wife, but if she permits, there is no fault even when there is no distress: the term ‘exclusively’ in the passage ‘she herself exclusively’ is intended to exclude her children; because the husband's exclusion is laid down by the passage ‘her husband has no right to use it,’ and because the husband being excluded, the exclusion of the brother and other relations who are more distant than the husband is, by the rule of the staff and the cake, established. From the

phrase 'except in distress,' it appears that there is no fault (if the wife's property be used) in distress; hence the same sage declares in the concluding text,—“Is entitled to use woman's property, also for the relief of the distress of the son.”—The term husband (occurring in the preceding text) is to be construed with this text. The term 'son' is intended to indicate the family; the meaning is, for the relief of the distress, *i. e.*, the pain caused by the want of food &c., of the family. The term 'also,' shows that the husband is entitled to give away or consume the wife's property without her consent, in any other difficulty caused by the want of money.

If it be said: How can it be shown by this text that a person is entitled to give away or consume another person's property without the consent of the owner; for it would be a contradiction in terms: in the case of consent, however, there is no difficulty although there be no distress. The answer is, that by virtue of the texts (to that effect it is to be admitted that) he has ownership itself over such property to use it for such purposes; so there is no defect. Accordingly Yogisvara says,—“A husband, if unwilling, is not liable to make good the property of his wife, taken by him in a famine or for the performance of some religious duty or during illness or while under restraint.”—“For the performance of some religious duty,” means, for the performance of necessary, daily or occasional, ceremonies; ‘while under restraint’ means, while arrested by the king for the levy of a fine or the like: but Vāchaspati says that the term *sampratiroddhake* (rendered into ‘while under restraint’) is an adjective qualifying ‘illness,’ and that it means preventing the pursuit of avocations. Also, the proposition, “if unwilling, is not liable to make good”—is to be understood to refer to the case of inability to refund on account of poverty and the like; but if he is able to repay, then even what is taken in a famine and the like, must be refunded: when this text may reasonably be interpreted in this very way, it would be improper to maintain that he may choose not to refund even if he is able to do so. As the term ‘husband’ is used in the text, therefore it is to be known that even in the event of distress the husband alone but no other

(relative) has the right to take a woman's property and to repay it at his desire.

8. What the husband promised to give to his wife must, when he is dead, be given to her by the son and the like. This too is declared by the same sage,—“Property promised by the husband to his wife must be paid by his sons, just as his debts.”—The term ‘sons’ includes grandsons and great-grandsons, by reason of the expression ‘just as his debts.’ By this it is shown that although the right of the sons accrues to their mother's property by birth, still there can be no partition, while she is alive.

Thus woman's property has been described.

PART II.

§ 1.—Joint succession of sons and daughters to gift subsequent and affectionate gift of husband. 2.—Maiden daughters succeed to *yautaka*. 3.—Daughter's succession to other kinds of property in preference to sons. 4.—According to Jímútaváhana this refers to *yautaka* only. 5.—But according to Vijnánesvara, this refers to every description of property. 6.—Latter's argument criticized by Jímútaváhana. 7.—Criticism by the author. 8.—The daughter's daughters and sons. 9.—15.—Succession to property of a childless woman. 9.—Succession of husband and parents according to form of marriage. 10.—Jímútaváhana's opinion criticized. 11.—Brothers' succession to gift of parents. 12.—*Sulka* goes to uterine brothers. 13.—Gift of *bandhus* goes to *bandhus*. 14.—Of other heirs. 15.—Females not expressly mentioned, cannot succeed.

1. Now, the partition of woman's property is explained.

On this Manu says,—“But when the mother is dead, all the uterine brothers and the uterine sisters shall equally divide the maternal estate.” Since in this text the term ‘and’ is used which conveys the same meaning as the conjunctive compound, therefore it is shewn that the uterine brothers and sisters are jointly entitled to take the mother's estate. The term ‘uterine’ is used to debar the children of a different mother.

Devala says,—“ A woman's property is common to sons and maiden daughters, when she is dead ; but if without leaving issue, let her husband, mother, brother or father take it.”—In this text, however, the conjunctive compound itself (of sons and daughters, *viz.*, *putra-kanyānām*) is used, hence the joint succession of sons as well as daughters is clear.

But this (joint succession of the son and daughter) is relative to two descriptions of woman's property, namely, the gift subsequent and what is through affection given by the husband. Accordingly Manu himself says,—“ The gift subsequent and what has been given by the affectionate husband ; these become the property of the children of the deceased woman though the husband is alive.”—‘ The gift subsequent ’ as defined before, also what has through affection been given by the husband ; ‘ these ’ descriptions of a woman's property belong to ‘ children,’ *i. e.*, sons and daughters of the deceased woman. ‘ Although the husband is alive ’ means, in spite of the surviving husband : since the locative case in ‘ *patyau* ’ (husband) is indicative of disregard. The term ‘ children ’ in this text being used without any qualification, the co-equal ownership of the male and female children is expressed ; hence they are to take the maternal estate in equal shares : not, however, the sisters in the first instance ; in their default the brothers.

‘ The sisters ’ in the text of Manu (para. 1) are to be taken to be unmarried. Accordingly Vrihaspati says,—“ A woman's property appertains to her issue, the daughter also is a sharer of it ; but when there is an unmarried daughter, the married one obtains a mere token of respect.”—The term ‘ issue ’ means, sons ; since ‘ the daughter ’ is separately mentioned : ‘ sharer of it ’ means, an equal sharer with a son : ‘ a mere token of respect ’ means that she obtains something, as a token of respect (due to her), in proportion to it, but not an equal share with a son.

In default of the unmarried daughters, the married ones also, whose husbands are alive, participate with their brothers. This is declared by Kātyāyana,—“ The sisters whose husbands are alive shall succeed together with their brothers.”

At the time of partition something should be given also to the daughter's daughters. Accordingly Manu says,—"If there be daughters of the daughters, to them also, according as they deserve, should be given through affection, something out of their grandmother's property,"—"according as they deserve," means, regard being had to propriety and to poverty and the like. Nor can it be argued that as the daughter's daughters have not then any right, wherefore is anything to be given to them? Since, just as in the case of paternal property, although the daughters have no right of inheritance when there are sons, still a quarter share is to be allotted to them by virtue of texts; the same reason holds good in this instance also. Accordingly the term 'through affection' is used. The distinction is, that in the present instance it being declared that the gift is to be made through affection, it is also indicated that it is optional; but in the other instance, the allotment is compulsory by reason of the expression of censure in the text,—“those that are unwilling to give become degraded.”

2. But the *yautaka* property (the nuptial presents) of the mother belongs to the maiden daughters alone; not to sons nor to married daughters. This is declared by Manu himself,—“But the *yautaka* or the nuptial present of the mother is the share of the unmarried daughters alone.”

According to the root *yu* to unite, whatever is, at the time of marriage, given to the bride and the bridegroom sitting upon the same seat, is called *yautaka* through the derivation, 'what belongs to the *yutau* (or the two united) is *yautaka*.' But some (commentators, among whom the author of the *Dáyabhāga* is one) maintain that on marriage the corporeal union of the man and wife takes place, by reason of the *Sruti*, namely,—“(His) bone (becomes identical) with (her) bone, flesh with flesh, skin with skin,”—the meaning of which is, that the bones and other parts of the husband and wife become one. Others (among whom the author of the *Dáyatattva* is one) say that on marriage the union (of the husband and wife) arises, since it is indicated in the text (which the bride and the bridegroom are made to recite at the time of the marriage,) namely,—

“What is thy heart, let that become mine, what is my heart let that become thine.” In the Nighantu it is said ‘What belongs to the two united or *yuta* is *yautaka*.’ The term is also read as *yautuka*, since it is stated in the Kosa (or authoritative vocabulary,)—“What is *yautaka* is also *yautuka*.” Devasvāmin says: The property of the mother which was received by her in the house of her father is called *yautaka*, such property being distinct from what was received in the house of her husband; since the term *yauta* signifies also disunion; as it is said in the Dhātupāṭha that ‘The root *yu* means, to unite or to disunite,’ and it is used in this sense, thus, ‘on completion of the *yuta* or disunion.’ This, (*i. e.*, what is said by Devasvāmin) is not good. For it is merely an assumption, inasmuch as there being no criterion for determination, it may equally be said that the term *yautaku* means the property received in the husband’s house, such property being distinct from what is obtained in the father’s house.

When there are more than one maiden daughter, then agreeably to the maxim, ‘Equality is the rule where no distinction is expressed,’ their shares must be equal, no distinction being expressed.

3. The property of the mother excepting these three kinds, (*viz.*, gift subsequent, affectionate gift of the husband and *yautaka*) devolves on her daughters (in the first instance and not on her sons.) Amongst them also, first on the unmarried daughters; in their default, on those that are married: amongst these also, first on those that are unprovided; on failure of them, on those who are provided, and whose husbands are living; failing them, on the widowed ones. Accordingly Gautama declares,—“A woman’s property goes to her daughters, unmarried and unprovided.”—It is explained by Aparārka and the author of the Kalpataru that ‘unprovided’ means childless, indigent, neglected (by the husband) or widowed. Vijñānesvara and others attach to the term the first two of the above meanings. In this text also although the general term ‘woman’s property’ is employed, still it is to be taken to refer to property other than the three descriptions mentioned above. This is said also in the Smṛitichandrikā and the Madanaratna.

4. But Jīmútavāhana and Raghunandana maintain that the text of Gautama cited above, (§3,) the text of Nārada, namely,—“The daughters (shall take) their mother’s (property;) in default of daughters, her (or their) offspring,”—the text of Kātyāyana, namely,—“But in default of the daughter, that property devolves on the son,”—the text of Yogīśvara, namely,—“Daughters share the residue of their mother’s property after payment of her debts; in their default, the issue,”—and other texts of law, declaring the succession of daughters to woman’s property, refer to *yautaka* or nuptial presents only, in conformity with the text of Manu, namely,—“The *yautaka* is the share of the unmarried daughters alone,”—and with the text of Vasishṭha,—“Let the females divide the nuptial present of their mother”: otherwise there would be a conflict with the text of Manu cited before (§ 1.) The term *párinayya* (in Vasishṭha’s text, rendered into ‘nuptial present’) has been explained by them to mean what is received at marriage (*parinaya*,) that is to say, *yautaka*. But in the Kalpataru and the Vivādaśhintāmaṇi, the reading is *párináyya* which is explained to mean the paraphernalia of a woman, such as the mirror, comb and the like.

5. But Vijnānesvara says:—

Every description of woman’s property goes first, even when there are the sons and the rest, to the daughters, the daughter’s daughters and the daughter’s sons; and in their default to the sons and the rest. The succession to the estate of a childless woman will be explained hereafter. In the text of Yogīśvara, namely,—“Daughters share the residue of their mother’s property after payment of her debts; in their default the issue”—the term ‘their’ relates not to daughters alone, but also to daughter’s daughters and daughter’s sons, by reason of the text of Nārada, namely,—“The daughters (shall take) their mother’s (property); in default of the daughters, their (or her) offspring.” In this text (of Nārada) the term *tat* (their or her) in the compound *tadanvayas* (their or her offspring) refers to the contiguous term daughters (and not to the term ‘mother’s’ which is more remote). Accord-

dingly the daughters' offspring including the daughters' daughters and the daughters' sons (is meant by the term *tadavayas*). Amongst them also first the daughter's daughter (succeeds;) in her default, the daughter's son. In the text of Yogisvara, which will be cited below, the term 'daughters' in the passage "but if she leave progeny, it will go to the (daughter's) daughters,"—means the daughter's daughters; for, otherwise, there would be tautology, as he himself has clearly declared the succession of daughters in the text,—“The daughters share the residuo of their mother's property &c.” The succession of the daughter's son follows from the general expression “the daughters' offspring” (Naradā's text).

But the right of the sons follows from the uni-residual conjunctive compound *pitros* ('of the parents') in the text (of Yājñavalkya,)—"After the demise of the parents the sons shall equally divide the heritage and the debts": and this has been already explained before. Also in the text,—"The daughters (shall take) the mother's (property); in their default, the issue,"—the son and the like are intended by the term 'issue,' since it is proper to construe it with the term 'mother's,' and since 'the daughters' are separately mentioned. But there can be no defect of tautology (attributable to this interpretation of the above two texts of Yājñavalkya) since this (latter) text is intended to establish the succession of the sons in default of the daughters, (while in the first text the mere right of the sons to inherit, is mentioned).

But the meaning of the text of Manu, namely,—“But when the mother is dead, &c.” (§1)—is this: 'All the uterine brothers shall equally divide their maternal property,' when their succession opens, 'and the uterine sisters' when their right takes effect. But the meaning is not that both (brothers and sisters) shall together divide; for, in the absence of the conjunctive compound or the uni-residual conjunctive compound, the mutual union (of brothers and sisters) does not appear; but the term 'and' (which it may be contended, bears the same meaning as a conjunctive compound) may reasonably be explained to express the union (of 'brothers and sisters') merely so far as regards their grammatical construction, both being

nominative to the verb 'divide.' As for example, if it is said, 'Devadatta *and* Yajnadatta shall pursue agriculture,' it does not (necessarily) appear that they must jointly do the same. Although, the right of both (sons and daughters) to succeed to their mother's estate has been declared in other texts, still this text is intended to prohibit, by the employment of the term 'equally,' the mode of unequal distribution on account of specific deductions and the like.

The term 'uterine' is used (in the above text of Manu) for the purpose of excluding the brothers and sisters sprung from a different mother. Hence it is that Manu (in another text) declares that the property of a low caste woman is taken by the daughter of her co-wife of a superior class, though not begotten by herself, and in her default by her progeny ; thus,—“The wealth of a woman, which has been in any manner given to her by her father, let the Bráhmaṇi (step) daughter take ; or let it belong to her offspring.” Here by the term 'woman' is intended a woman of the Kshatriya or the like (inferior) class, having no issue ; and the term 'Bráhmaṇi' is illustrative, meaning, belonging to a superior class. This (text) forms an exception to the rule that 'the property of a childless woman, appertains to the husband.' Hence the daughter of a Kshatriya co-wife takes the property of her childless step-mother of the Vaisya class, and the daughter of a rival wife of the Vaisya class takes the property of her Súdra step-mother without issue ; and in her default her children ; and in their default, the text,—“The property of a childless woman appertains to the husband,”—is applicable to such property.

Hence the daughters and the rest are entitled to take the property of a woman leaving issue, in the first instance ; and after them the sons and the like.

6. On this Jímútaváhana says: Since, although a conjunctive compound (of the terms 'brothers' and 'sisters') is not employed in the texts of Manu, Vrihaspati, Sankha and Likhita, yet the same meaning (that is expressed by a conjunctive compound) is conveyed by the term 'and' which signifies conjunction ; since in the text

of Devala the conjunctive compound itself of 'sons and daughters,' *viz.*, *putra-kanyānām* is used; and since, for the sake of consistency (of this text of Devala with the texts of Manu and the rest), it is proper that the term 'and' in those texts (of Manu and the rest) also, should denote the mutual union (of brothers and sisters connected by it), therefore it is reasonable to say that brothers and sisters shall together take the property, dividing the same. Besides if the daughters alone were entitled to take the entire property of their mother, then the special text with respect to the *yautaka* or nuptial presents would be meaningless. And it is not reasonable to say that this text (regarding *yautaka*) is intended to exclude the married daughters, as in it the term "unmarried daughters" is employed; because their exclusion, as regards all kinds of *strīdhanam*, is declared in the texts of Gautama and the rest, and because it cannot but be admitted that on failure of the unmarried daughters, the married ones are entitled to take even the *yautaka*. Hence the distinction is, that joint succession alone of sons and daughters, is intended by Manu and the rest, to be relative to the presents before the fire, and other kinds of woman's property; but the succession of the daughters alone, to be relative to *yautaka* or nuptial presents. But the terms 'gift subsequent' and 'affectionate gift of the husband' used by Manu in another text are intended to include other descriptions of woman's property such as 'presents before the nuptial fire,' &c.; for, otherwise, the separate text regarding the *yautaka* would be useless.

This is the opinion also of the author of the *Dāyātattva* and of others.

7. As regards this (contention) it appears that, as there is no authority to support the view that the terms 'gift subsequent,' &c., mentioned (in the text of Manu) are intended to be illustrative, therefore to all kinds of the mother's estate excepting these two (*viz.*, the gift subsequent and the affectionate gift of the husband), the succession of the daughters takes place in the first instance; and on failure of them, the succession of the sons. The special provision, however, concerning the *yautaka* is

intended to indicate the exclusion of the married daughters and the like. If it be said that their exclusion is common to other kinds of woman's property (and not peculiar to the *gantuka*, consequently the special provision is useless). The answer is, true; but (the distinction is that) the exclusion is not unconditional (as regards other kinds of woman's property), whereas in the case of *gantuka* it is unconditional. Accordingly it is held by the author of the *Smritichandrikā*, and others that on failure of the maiden daughter the *gantuka* appertains to the husband or the like, alone, according to the form of marriage, and not to the married daughters and the like.

But what is intended by Professor Vijnānesvara is this: The text (of Yājñavalkya) which generally lays down that woman's property is to be inherited by the daughters, can only be restricted in its application, if there be another text which admits of no other interpretation excepting the one that restricts the first text. But it cannot be contended that the texts of Manu and others, establish the joint succession of sons and daughters, and admit of no other explanation. For these texts may be explained to establish the son's right of inheritance. Nor can it be contended that the joint succession of the sons and daughters is indicated by the term 'and' (in some texts) and by the conjunctive compound (in the text of Devala, §1). Because these may as well be explained to express the construction (of both the brother and sister or the son and daughter) as the persons who are to effect the division. Otherwise, when the uni-residual conjunctive compound is used in the text,—“The wife and the daughters also, the parents (*pitarau*), &c.,”—and the conjunctive compound is used in the text,—“it appertains to the mother and the father (*māti-pitros*),”—the succession of the mother and the father, one after the other, which is maintained in all the commentaries (on law), would be unreasonable. In that instance it is said that, consistently with the text of Vishnu and the like, the compounds may be explained to express no more than the association (of the component words) as regards grammatical construction, but that the order of succession, one after the other, of the persons expressed by the words,

though at variance (with the grammatical construction) is not incompatible (with it). Similarly, in this instance also, the order of succession, one after the other, (of the sons and the daughters,) is expressed by the text of Yogisvara, namely,—“On failure of them, the issue,”—and by the text of Kátyáyana, namely,—“But in default of the daughters, the inheritance devolves on the sons;” and in conformity with these texts, it is proper to explain the conjunctive compound and the term ‘and’ (used in other texts) to mean no more than the association (of the terms sons and daughters) for grammatical construction: but it is not proper to say that agreeably to the conjunctive compound and the term ‘and’ (occurring in other texts) these texts are to be interpreted to bear a different meaning (from what appears on the face of them). Besides, there would be the fallacy of mutual dependence: since, if the joint succession (of sons and daughters) be established, then the texts (declaring the succession of daughters alone) are to be restricted in their application; but if these texts be restricted in their application, then it can be ascertained that the texts (in which the conjunctive compound or the term ‘and’ is used) intend joint succession (of sons and daughters).

It cannot be argued that (agreeably to the above view) the special text (of Manu §1) regarding the gift subsequent and the like would be meaningless. Since this text may have a meaning, if it be interpreted in the same way in which the text regarding the *yantaku* has been explained in the Smritichandriká. Or all the texts may have a meaning if interpreted in this way: the mere right of inheritance of the children being established by the text (of Manu regarding the gift subsequent and the like) in which the term ‘gift subsequent’ is intended to be illustrative, the equality (of shares) and the like are laid down by the texts like—“But when the mother is dead, &c.” (§ 1). Thus there is no difficulty.

The venerable Vidyáranya, however, has given both (the above interpretations, the first of which is) according to the Smritichandriká and (the second according to) the Mitáksharí, but he has not passed any opinion.

8. But the succession, before the sons and the like, of the daughter's daughter, and after her, of the daughter's son is unanimously admitted by the authors of the *Mitákshará*, the (*Smṛiti*) *Chandriká* and the *Madanaratna* as well as by the venerable *Vidyáranya*.

But *Jímútaváhana* and the author of the *Dáyatattva* say:—In default of the daughters, the succession of sons alone takes place, but not the succession of the daughter's daughter and the like, and afterwards that of the sons. Since, in the text of *Nárada*, namely,—“The mother's (property), the daughters (shall take); in default of daughters, her (or their) issue”—the term ‘issue’ which signifies, the issue in the shape of the son and the like, cannot properly be construed with ‘daughters.’ For the term daughter which signifies a particular sort of progeny cannot possibly be construed with another word ‘issue’ signifying) progeny, as there is no mutual requirement (of the words) both being alike. Nor is the want of mutual requirement affected by the construction (of the term ‘issue’) with the pronoun *tat* (her or their), for this pronoun (relating as it does agreeably to the opposite view, to the term daughters) must present the idea of daughters as such. Besides, as in the text of *Yájñavalkya* (§ 4), the term ‘daughters’ has the termination of the first or nominative case, and the pronoun ‘of them’ (*tábhyas*), has that of the fifth or ablative case, they cannot be construed with the term ‘issue’ which requires a word in the genitive case to be construed therewith; hence it is to be construed with the term ‘mother's’ though it is separated by the intervention of other terms. Therefore consistently with the text of *Yájñavalkya* the meaning of the term in the text of *Nárada* also, is, mother's issue such as sons and the like, but not the daughters' issue. Moreover, conformably with the text of *Baudháyana*, namely,—“Male issue of the body (*angaja*) being left, the property must go to them,”—the succession of the son alone as an immediate issue of the body is proper by reason of propinquity, but not of the daughter's son and the like who are mediate descendants not born of her person.

This is erroneous. For if a word signifying progeny could not be construed with another word denoting progeny,

then there could be no such construction in the case of the son and the like also. If this argument be met by saying that there can be no objection to the construction of two words signifying progeny when one is expressed to be the progeny of the other, then the same may be said in this instance too. (And it must be so said,) for otherwise there could be no construction even in such a case, as 'the daughter's son.' Therefore this (objection of Jímútaváhana) proceeds only from ignorance of grammatical construction. In the text of Yājñavalkya, however, although the son and the like alone are expressed by 'the mother's issue,' still this text merely recites the right of the sons which has already been laid down in the text,—“On the demise, of the parents, the sons shall equally divide the heritage and the debts,”—for the purpose of showing that the liquidation of the debts and the default of the daughters are the conditions of their right: and there can be no inconsistency if their right takes effect even after the daughter's sons. But the text of Baudhāyana, namely—“male issue of the body being left &c.”—which may be taken to establish by its generality the son's right of succession to the estate of the mother, or to establish generally the right of sons and daughters as the term *angaja* (rendered into male issue) signifies any child,—ought to be interpreted with reference to a propinquity which is not inconsistent with any other text. So this (*i. e.* the argument drawn from this text) is nothing.

9. (The heir to woman's property) on failure of issue is declared by Yogísvara,—“If she be gone (to rest) without issue, her kinsmen shall take it.”—‘If she be gone,’ *i. e.*, if she die ‘without issue,’ *i. e.*, without leaving descendants from the daughter to the great-grandson, ‘her kinsmen,’ *i. e.*, such as are mentioned in the following couplet, ‘shall take it,’ *i. e.* the woman's property.

The same sage declares the succession of the kinsmen in different ways according to the different forms of marriage, thus,—“The property of a childless woman, (married,) also in the four forms of marriage, of which (series of four) the Bráhma stands in the beginning, goes to her husband; but if she is a mother, it belongs to her (daugh-

tor's) daughters; and in other forms of marriage, it goes to the father,"—"The four forms of marriage are, the Bráhma, the Daiva, the A'rsa and the Prájápatya: the Gándharva also is included, by force of the term 'also.' Or 'the four forms' may be taken to be exclusive of the Bráhma, and to include the Daiva, the A'rsa, the Prájápatya and the Gándharva; for the compound *bráhmádishu* (rendered into, 'of which the Bráhma stands in the beginning,')—being a *bahuvrīhi* or a descriptive adjective, the attribute expressed by it may be taken to have no reference to the predication. By this (interpretation) is removed the disagreement (of this text of Yājñavalkya) with the following text of Manu, namely,—“It is ordained that the property (of a woman married) in (the forms of marriage called) the Bráhma, Daiva, A'rsa, Gándharva or Prájápatya, shall belong to the husband alone, if she die without issue.”

The property of a childless woman married in the Bráhma or the like form of marriage belongs to her husband, and on failure of him to the husband's nearest relations. For the nearness to the owner being debarred by the husband, preference ought to be given to the nearness to the husband.

But if a woman be married 'in other forms of marriage,' *i. e.*, in the A'sura or the like, 'it goes to her father,' *i. e.*, to the mother and the father, since the term 'father' (*pitrī*) is the result of the uni-residual conjunctive compound (of mother and father). Amongst them also, it goes to the mother in the first instance, and after her to the father, according to the principle set forth while explaining the term 'parents', (*pitarau* in the text,—“The wife and the daughter also, the parents &c.”) there being no other text against the application of that principle to the present case. Accordingly, in the text,—“But the property given to a woman (married) in the A'sura or the like forms of marriage, is ordained for the mother and the father, if she die without leaving issue,”—Manu shows the priority of the mother, by placing first the term mother in the conjunctive compound *mātá-pitros*.

Besides, as it is expressly declared that the father inherits the property of a maiden on failure of the mother, so the same order is proper in this case also. Thus Bau-

dháyana declares,—“The wealth of a deceased maiden, let the uterine brothers themselves take; on failure of them, it shall belong to the mother; in her default, to the father.” On failure of the mother and the father, it goes to their nearest relations.

In all the above-mentioned forms of marriage without distinction, if the woman be ‘a mother,’ *i. e.*, have issue, her property belongs to her ‘daughters.’ It has already been mentioned that by the term ‘daughters’ in this text (para. 2) the daughter’s daughters are intended. The daughter’s daughters also, inherit in the order of the unmarried ones, &c., by reason of the text of Gautama and others. And it has previously been stated that when the daughters take the property, something should through affection be given to the daughter’s daughters. When the daughter’s daughters have their mothers different, and those sprung from one mother are unequal in number to those sprung from another, they shall divide their grandmother’s property according to their mothers, just as grandsons do according to their fathers; for Gautama declares,—“Or let the share of each class be according to the mother.”

10. But Jímútaváhana says:—This text lays down a rule regarding only that wealth which is received at the time of the celebration of marriage in the Bráhma or the like forms, but not regarding the entire property of a woman married in any of those forms. Because the connection (of the words) being, “the property, in (the forms of marriage called) the Bráhma, &c.”—if the time of the celebration of marriage be indicated, the term (‘in the Bráhma &c.’) has a metaphorical meaning, in relation to time present; but, if a woman married in those forms be intended, it has a metaphorical meaning in relation to the past ceremony of marriage: hence the latter meaning is less approved than the former.

The same is the opinion of his follower, the author of the Dáyatattva.

This is not right. For it being generally laid down in the preceding text that the kinsmen shall take the property of a childless woman, the question arises, what sort of kinsmen shall take the property of what description of

a childless woman? Therefore it is proper to say that the terms Bráhma, &c., are intended to qualify her, (*i. e.*, the childless woman). As for the argument founded upon a consideration of the relation to the present and past time;—that is worthless. Because in both (the meanings) the quality of being past is the same when the partition is made, (gift and marriage being then both past); and because the quality of being present at the time of marriage is of no importance; also because the connubial relation (of the woman) effected by the marriage, is of greater importance.

11. But whatever may be the form of marriage, the property received by a woman from her parents subsequent to the marriage, belongs to her brothers alone. This is declared by Kátyáyana,—“But whatever immoveable property has been given by the parents to their daughter, goes always to her brothers, if she die without issue.”

But Visvarúpa and Jímútaváhana says:—What had been given to her by the parents before her marriage, goes to the brothers; because what is received after marriage becomes ‘gift subsequent,’ and what is received at the time of marriage goes, according to the form of marriage, either to the husband or to the parents.

This is not tenable. For there is no conflict (of this text with any other text,) as this text is relative to immoveable property. Nor can it be argued that when the brother succeeds to immoveable property, his succession to moveable property follows from the rule of ‘the staff and the cake’ (*a fortiori*). For that rule is not applicable to what forms an exception.

12. But the fee or *sulka* belongs to uterine brothers alone, by reason of the text of Gautama, namely,—“The sister’s fee or *sulka* belongs to the uterine brother.” On failure of the uterine brother, it goes to the mother; for the same sage says,—“After them, it belongs to the mother; but some say, (the mother inherits) before them.”—The latter is the opinion of others.

13. What was given to a woman by her *bandhus* (or consanguine relations) belongs, if she die without issue, to her

bandhus, in the first instance, failing them, to her husband, by reason of the text of Kátyáyana, namely,—“What was given by the *bandhus* appertains to the *bandhus*; on failure of them, it goes to the husband.”

14. But when there is a failure of the above-mentioned heirs to a childless woman's property, Vrihaspati ordains,—“The mother's sister, the maternal uncle's wife, the paternal uncle's wife, the father's sister, the mother-in-law and the wife of an elder brother are pronounced similar to mothers: if they leave no issue of the body, nor son (of a rival wife,) nor daughter's son, nor their son, the sister's son and the rest shall take their property.”—Here by the term *aurasa* or ‘issue of the body,’ both sons and daughters are included; for they debar all (other heirs,) and the order in which they debar others has previously been mentioned. And by the term ‘son,’ is intended the son of a co-wife; for Manu declares,—“If among all the wives of the same person, one be a mother of a son, then all of them become by that son mothers of male issue: this is ordained by Manu.” But the term ‘son’ is not intended to be in apposition with the term *aurasa* or issue of the body; because in that case it would be useless, and because the sister's son and the rest would be heirs although the son of a co-wife be living; and that would be contrary to immemorial custom. The pronoun ‘their’ or *tat* in the phrase ‘their son’ relates to the terms ‘issue of the body’ and ‘son of a co-wife,’ though they are separated (by other words,) and not to the term ‘daughter's son’ though it immediately precedes; because the son of a daughter's son is not competent to offer oblations. Hence on failure of heirs down to the daughter's son, first the *aurasa* inherits, after him his sons and grandsons. For it is proper that the succession should devolve on them; inasmuch as they are competent to present the *pinda* and are liable to discharge the debts, by reason of the text,—“Debts are to be liquidated by sons and son's sons.” In their default, the son of a rival wife, his son and grandson (become heirs in their order); by reason of their being, under the circumstances, the giver of the *pinda*, and the liquidator of debts, and by reason of the text of Manu, cited above.

Hence on failure of these, the sister's son and the rest alone, in spite of the *sapindas* such as the father-in-law, are, by virtue of this text (of Vrihaspati) which is not reconcilable in any other way, entitled to succeed, according to their comparative propinquity, to the property of their mother's sister and the rest.

15. But the daughter-in-law and others (of the same sex) are entitled to food and raiment only; for the nearness as a *sapinda* is of no force when it is opposed by express texts: since a text of the Sruti declares,—“Therefore women are devoid of the senses and incompetent to inherit,”—and a text of Manu, founded upon it, says,—“Indeed the rule is that, devoid of the senses, and incompetent to inherit, women are useless.” The conclusion arrived at by the author of the Smritichandriká, Haradatta and other southern commentators as well as by all the oriental commentators such as Jímútaváhana, is, that those women only are entitled to inherit, whose right of succession has been expressly mentioned in texts such as,—“The wife and the daughters also &c.,”—but that others are certainly prohibited from taking heritage by the texts of the Sruti and of Manu.

Thus ends the partition of a woman's property.



CHAPTER VI.

PARTITION OF CONCEALED PROPERTY.

§ 1.—Partition of concealed property. 2.—Concealment of joint property is theft. 3.—Restoration to be caused by gentle means.

1. Now is explained the mode of distribution of that which was at the time of partition, concealed by any one (of the co-heirs), but is subsequently discovered. On that (subject) Manu says,—“When all the debts and wealth have been justly distributed according to law, if anything be afterwards discovered; the whole of it shall be equally distributed.” Yogisvara declares,—“Effects which have been stolen by any one of the co-heirs, and which are discovered after the separation, let them again divide in equal shares: this is a settled rule.”—Here, from the use of the term ‘equal’ it appears that the (mode of unequal) distribution with specific deductions is prohibited: by the term ‘divide’ it is indicated that the property shall not be taken by him alone who discovers it, and that a smaller share shall not be allotted to him who concealed it.

2. Some (commentators) assert that, when the (above) texts may have a meaning (if interpreted) in this way, the concealment (by a co-heir) of joint property does not constitute the offence of theft, inasmuch as it was taken under the belief of its being (his) own. This is foolish. For in joint property there being also the right of other (co-heirs), it cannot be denied that there is ‘the wrongful taking of another’s property,’—which is the meaning of the term theft. If it be said that there is no theft as it was not taken with the belief of its being another’s. (The answer is:) it is not so, since concealment necessarily involves the belief of its being another’s; accordingly

the term 'stolen' is employed (in the above text of Yājñavalkya). (If it be asked) has not Manu in the text—"The eldest (brother) who out of covetousness defrauds his younger ones, shall forfeit the right of the eldest and his share, and shall be punished by the king"—condemned the eldest alone and not the younger ones in case of misappropriation of common property? (The answer is) true: but when an act which may be committed, is affirmed to be an offence if committed even by the eldest (brother) who holds the position of a father (to his younger brothers), then it becomes necessarily affirmed by reason of the rule of 'the staff and the cake,' that the same is an offence if committed by those (younger brothers) that are dependent on him and hold the position of a son (to him). Hence those who maintain that the texts declaring equal distribution in a case of concealment of joint property, intend that there is no offence of theft,—are silenced by this text of Manu, as well as by the following text of Sruti which declares it to be an offence without any distinction, namely,—“If any one dispossesses a sharer of his share, he may molest him; or if he does not molest him, he may molest his son or son's son.”—The meaning of this text of Sruti is: 'If any one dispossesses,' *i. e.*, deprives 'a sharer,' *i. e.*, one entitled to a share, 'of his share,' that is, anyhow by force or fraud does not give him a share; 'he,' *i. e.*, who is dispossessed of his share 'may molest,' *i. e.*, injure 'him,' *i. e.*, the dispossessor by reason of his offence; if he does not injure him, he may injure his son or grandson. Those, however, who are ignorant of the Sruti may indeed talk irrationally. But we have already said that even in the case of joint property, there being another's right, the definition of theft is not inapplicable.

Just as (in an instance discussed in the Mīmāṃsā) the adverse argument is set forth thus,—If, when the sacrificial food consisting of green kidney-beans is not procurable, black kidney-beans be used as a substitute by reason of the similarity (of these two kinds of beans in many respects), then the prohibition laid down in the passage. "Black kidney-beans are not fit for sacrifices," does not apply; because they are used under the impression that

they contain the constituent elements of the green kidney-beans: but the conclusion arrived at is, that they cannot be used even as a substitute, upon the ground that all that is necessary for the validity of a prohibition, being, that what is prohibited might take place (but for the prohibition), the prohibition (of the use of black kidney-beans for sacrificial purposes), is not unreasonable, since (some of) the constituent elements of black kidney-beans also are unavoidably used, even when green kidney-beans are used, (because the two sorts of beans must have some of their constituent elements common, which make them appear similar), and hence those elements would have been fit for sacrifices.

3. No complaint, however, should be made by the co-sharers before the king, and even if it be made the king shall cause the restoration by gentle means: this, of which the only visible object is the maintenance of good feelings (of the co-heirs towards each other), is declared by Kát-yáyana, thus,—“Property misappropriated by a *bandhu* or kinsman shall not be caused to be restored by force.” Nor should it be complained that the consumption by a co-heir during coparcenary was over and above his due proportion; and even when there was such consumption, it is not to be taken into account by the king. To this effect the same sage declares,—“The (unequal) consumption of unseparated *bandhus* or kinsmen shall not be removed” (by an adjustment of accounts). The purport is that unequal consumption cannot be prevented, as it is unavoidable.

It is to be observed that while these texts (of Kát-yáyana) may in this way be reasonably explained to mean no more than what they plainly signify; it cannot be held that these texts also intend that there is no offence of theft, for then they would have a meaning not expressed: hence in the above cases also, the penance for theft, and legal punishment must take place.

CHAPTER VII.

OF IMPARTIBLE THINGS.

§ 1.—Self-acquired property. 2.—Of other things not liable to partition.

1. Now, what is not liable to partition, is explained. On this Yogisvara declares,—“Whatever else is, without detriment to the paternal property, acquired by a man himself, or received from a friend or obtained at nuptials, does not belong to his co-heirs (*dīyādas*) ; nor shall he, who recovers hereditary property which had been taken away, give it up to his co-heirs ; nor what has been gained by learning.”

The term ‘without detriment to the paternal property’ is to be construed with all (the items of property described) ; for, were it isolated in construction, then the items such as what is received from a friend, although they involve the expense of the paternal property, would not be liable to partition ; but this would be opposed to the practice of persons following the precepts of the Vedas, and, with respect to what is gained by learning, to the text of Nārada, namely,—“He who maintains the family of a brother engaged in the pursuit of knowledge, shall take, though he may be ignorant, a share of the wealth gained by that knowledge.”

Kātyāyana also confirms this view by the definition he gives of the gains of learning that are impartible, thus,—“Wealth gained through learning acquired from a stranger while receiving a foreign maintenance is termed gains of learning.”

Manu also clearly says,—“Whatever a man has acquired through his own exertion without relying on the paternal property, he shall not give it up to his coparceners (*dīyādas*) ; nor what has been acquired through learning.”—‘Exertion’ signifies service and the like.

A special rule has been laid down by Sankha, with regard to hereditary immoveable property, though recovered without detriment to the paternal estate, as in the text,—“When one parcener alone has by his own exertion recovered land which had been lost before; the others shall get in proportion to their shares, but after setting apart a quarter share for him.”—The meaning is: after having allotted to the recoverer a fourth-part (of the land) as a price of the recovery, all the co-sharers (including the recoverer) shall equally divide the remaining three parts.

Although this sort of impartibility follows from the very (plain) principle that ‘what is acquired by a man belongs to him,’ (and so no authority of the Sāstras is necessary for establishing it); still there is no defect, inasmuch as generally the Institutes on Positive law do, as we have already stated in the introductory chapter, lay down rules which are as well deducible from reason.

2. Other kinds of property not liable to partition are mentioned by Manu, thus,—“Clothes, vehicles, ornaments, prepared food, water, women, religious fund and charitaable work (*yoga-kshemam*), as well as a passage are declared to be not liable to partition.”

Patram (‘vehicle’) means, conveyance.

‘Clothes and the like’ (*i. e.* ornaments) belong to him alone by whom they have been worn: but those that are not worn but are intended for sale, are certainly liable to distribution.

‘Prepared food,’ *i. e.*, cooked food, shall be partaken by all as much as they can, but shall not be weighed and divided.

‘Water,’ *i. e.*, a reservoir of water, such as a well, shall be used by all accordingly as they require.

‘Women,’ *i. e.*, female slaves being unequal (in number to the shares) shall not be divided, but shall be employed in work by turns. But women kept in concubinage by the father shall not be divided, though equal in number, by reason of the text of Gautama, namely,—“No partition is allowed in the case of concubines.”

The term ‘religious fund’ (*yoga*) means a fund for the performance of religious ceremonies; and ‘charitable

work' (*kshema*) signifies a reservoir of water, or the like, constructed for public benefit. The impartibility of these two, though raised or made at the charge of the paternal property, are set forth as examples: since, directly or indirectly, a partition of these is not possible, far less when these are hereditary. Accordingly Laugákshi declares,—“The sages declare that charitable work is a reservoir of water or the like constructed for public good, and that religious fund is property set apart for the performance of religious rites: these two are pronounced impartible: so are the bed and the seat.” Some hold, that the term *yoga-kshema* intend those who perform sacrifices and charitable works, as the king's minister (of charitable works,) the (family) priest, and the like. Others say that it signifies weapons, cow-tails, shoes and similar things.

A passage' is a way for ingress and egress to and from a house, garden or the like; this also is impartible.

3. Clothes and the like worn by the father shall be given to the person who partakes of food at his obsequies: as directed by Vrihaspati,—“The clothes and ornaments, the bed and similar furniture, appertaining to the father, as well as his vehicle and the like, shall be given, after perfuming them with fragrant drugs and wreaths of flowers, to the person who partakes of the funeral repast.”

4. Also ornaments that are worn by the females are not partible: thus it is declared,—“The *dáyádas* or co-heirs shall not divide such ornaments as are worn by the females during the life of their husband: they, who do so, become degraded.”—From the term ‘worn’ it appears that those that are not worn are liable to partition. By the phrase ‘during the life of their husband,’ it is indicated that whatever is worn in any part of the body as a badge of the husband's life, is not liable to partition.

5. Also what has been received from the father as a token of affection, cannot be divided: thus it is declared,—“By favor of the father, clothes and ornaments are used.”—By the term ‘are used,’ their impartibility is indicated.

Likewise, what has been given by the parents (is not divisible) by reason of the text of law,—“Whatever has been given by the parents to any one, becomes exclusively his property.”

But it is to be observed that gifts by the parents out of favor or affection should be guided by propriety but not by caprice ; for that would be contrary to the practice of the learned.

6. The details of what has been acquired by the use of paternal property are found in many texts of law concerning what is gained by heroism, and the like ; but these are not written here for fear of increasing the bulk of the book.

CHAPTER VIII.

EXCLUSION FROM INHERITANCE.

§ 1.—Those incompetent to inherit. 2.—Maintenance. 3.—Penance. 4.—Right cannot be divested by subsequent disqualification; right revives on subsequent cure. 5.—Females disqualified. 6.—Their sons entitled. 7.—Outcast and his son, not to be maintained. 8.—Son by a woman of superior class. 9.—Impotent &c. can marry. 10.—The daughters and wives. 11.—The vicious are excluded.

1. Now those that are not entitled to shares on partition (or succession) are described.

On this subject Yogisvara,—“An impotent person, an outcast and his issue, one lame, a madman, an idiot, a blind man, a person afflicted with an incurable disease, as well as others (similarly disqualified) shall not, get shares, but shall be maintained.”

“His issue” means, the issue of an outcast.

It is to be observed that “an impotent person” and “a blind man,” if so from their birth, are certainly not entitled to shares on partition, but if they become so in the interim, are certainly entitled to shares on a partition agreeably to the mode laid down in the text,—“Or his allotment must be made out of the visible estate corrected for income and expenditure,” (p. 94,)—provided their cure be effected by medication or the like.

By the term “others” are included those that have adopted an order other than that of the householder, that are inimical to their father, that are addicted to vice (*upapātaki*), that are deaf or dumb, and that are destitute of an organ of sense (or action). Thus Vasishṭha declares,—“But those who have adopted an order other than that of the householder are not entitled to shares.” So also Nārada says,—“An enemy to his father, an outcast, an impotent person, and one who is addicted to vice take no share (of the inheritance), though they be *aurasa* or real sons, much less if they be sons of the wife.” Also Manu

says,—“ An impotent person and an outcast are excluded from a share of the heritage ; and so are persons deaf and blind from birth as well as madmen, idiots, the dumb and whoever are destitute of an organ (of sense or action):” *nirindriya* or “ destitute of an organ ” is one who has lost an organ of sense by disease ; hence an impotent person does not come under it. But some say that “ destitute of an organ ” means those that are devoid of hands, feet or the like (organ of action).

2. The impotent and the others do not obtain any share but “ shall be maintained ” (§ 1 Yogisvara’s text) *i. e.* supported by giving food, raiment or by the like. But if they be not maintained, a grave offence is committed ; so Manu declares,—“ To all of them food and raiment ought to be given by a wise man ; he who does not give, becomes deeply degraded.”—“ Deeply ” means for life.

3. Amongst them, however, an outcast (*patita*) and one addicted to vice (*upa-pâtaki*) are excluded from inheritance, if they do not perform the penance. But of one who does not, out of perverseness, perform the penance, the exclusion is certain.

4. The exclusion, again, of these, takes place, if their disqualification occur previously to partition (or succession ;) but not also if subsequently to partition (or succession ;) for there is no authority for the resumption of allotted shares.

Professor Vijnânesvara says that if subsequently (to partition or succession) their defects are cured by medication or the like, they become entitled to obtain their shares. And this is reasonable ; because it is by reason of the defects that they were disqualified to share ; and because the same principle is applicable (to such a case) as is laid down in the text,—“ One who is begotten by one of equal class, after the co-parceners have been separated, is taker of the share.” (p. 92.)

5. The (masculine) gender in the words ‘ an outcast,’ &c., is not intended to be expressive (of restriction,) for it

cannot reasonably be accepted (in that sense); in the same way as in the text,—“A Brāhmana (in the masculine gender) shall not drink spirituous liquors.” Hence, so far as is applicable, this (law of exclusion based upon defects) excludes the wife, the daughters or the like (female heirs) as well.

6. Though the impotent and the rest are excluded from inheritance, still their sons are entitled to the shares (which would have been allotted to them). This is declared by Yogisvara,—“But of these, the *aurasa* or true son and the *kshetrāja* or son of the wife, if free from defect, take the shares.”—“Free from defect” means, having no defect such as is mentioned above which causes the exclusion from inheritance. Among those (that are excluded from inheritance,) an impotent person may have a *kshetrāja* or son of the wife; the rest, an *aurasa* or a real son as well. The mention of these two kinds of sons is intended to exclude the other descriptions of sons.

7. An outcast and his son are not entitled to maintenance. Accordingly Devala says,—“When the father is dead, an impotent person, a leper, a madman, an idiot, a blind man, an outcast, the offspring of an outcast and a person wearing the token (of religious mendicancy) do not obtain a share of the heritage. Food and raiment should be given to them excepting the outcast: but the sons of such persons being free from similar defects, shall obtain their father's share of the inheritance.”—‘A person wearing the token’ means one who has become a religious wanderer or the like. Here (*i. e.*, in the second verse) the term ‘outcast’ includes also the son of an outcast, for being begotten by an outcast he too becomes an outcast; by reason of the text of law, namely,—“The issue of an outcast becomes certainly outcast excepting a female, for she goes to another (family).” The term ‘dead’ indicates (only) the time for partition, because they are not entitled even if partition be made during the lifetime of the father.

8. Also Kātyāyana says,—“The son of a woman married in an irregular order, and he who is begotten by

a kinsman of the same family are unworthy of inheritance; and so is an apostate from a religious order." If a woman of a superior tribe be espoused after marrying one of an inferior tribe, then both of them are married in irregular order. A *kshetrāja* or son of the wife, procreated by a kinsman of the same family without being authorized to raise up issue, is unworthy of inheritance.

"But the son of a woman married in irregular order, may be heir, provided he belong to the same class with his father; and so may the son of a man belonging to a different (but superior) tribe, but begotten by a woman espoused in the regular order. The son of a woman married by a man of inferior tribe does not take the (*riktha* or unobstructed) heritage. But bare food and raiment only should be given by his *bandhus*. But in default of the *bandhus* he may take his paternal property. The *bāndavas* (being step-brothers?) shall not be compelled to give up (to him a share of) that property received by them, and) belonging to (their or his?) own father." (*Ude Dāya-bhāga*, ch. V. para. 16 and notes.)

9. It is declared by Manu that an impotent person and the rest may espouse wives and have sons, thus,—
"If an impotent person and the rest should at any time desire to marry, the offspring of such as have issue shall be capable of inheriting." *Tantu* (rendered into issue) means offspring.

It cannot be argued, how can an impotent person and the rest contract marriages, since they are degraded for want of investiture with the sacred thread? Because, for want of investiture owing to unfitness for investiture, a person is not degraded, any more than a *Sūdra*.

10. Their daughters must be maintained till their marriage, and must be married. Their wives, however, that are childless and chaste must be maintained, provided they are not perverse; if otherwise, shall be expelled. This is declared by *Yogisvara*,—"Their daughters also must be maintained until provided with husbands. Their childless wives, conducting themselves aright, must be supported: but such as are unchaste should be expelled; and so indeed should those that are perverse."

11. A'pastamba ordains,—“Of an excommunicated person, the inheritance, oblations of food and libations of water cease.”—‘An excommunicated person’ is one in whose company water is not drunk (by his caste men). Likewise Vrihaspati says,—“Though born of a woman of equal class, a son destitute of virtue is unworthy of the paternal wealth: it is declared to belong to such kinsmen offering funeral oblations to him as are versed in the Vedas. A son redeems his father from debt to superior and inferior beings: hence there is no use for one who acts otherwise. What can be done with a cow which neither gives milk nor bears calves? For what purpose was that son born who is neither learned nor virtuous? A son who is ignorant of the Śāstras and devoid of courage and good purposes, who is destitute of the practice of devotion, and who is wanting in good conduct, is similar to urine and excrement.”

The meaning is this: A son who performs the obsequies of his father and other ancestors, is of approved excellence, though he be uninitiated; not a son who acts otherwise, be he the eldest and conversant with the whole Veda.

The purport is, that the very ownership of the paternal property forms the remuneration of one who performs the duties of a son: wherefore should one that neglects them have a right to that remuneration? To this effect is the text of law, namely,—“Since a son delivers his father from the hell called *put*, therefore he is named *put-tra* by the self-existent himself.”

Also Manu says,—“All the brothers who are addicted to vice lose their title to inheritance.”—The purport is, that those who are incapable of performing the rites enjoined by the Sruti and the Smriti, as well as those that are addicted to vice, are not entitled to get shares.

Thus (are described) those that are not entitled to shares on partition (or succession).

CHAPTER IX.

RIGHTS OF SEPARATED CO-SHARERS.

§ 1.—Power of a separated co-sharer to dispose of his share. 2.—Immoveables. 3.—Partition cannot be re-opened.

1. Now the rights of separated kinsmen (are considered). On that subject Nārada says,—“When there are many sprung from one man, whose duties are separate, whose transactions are separate, and whose instruments of (household) work are separate; if they be not accordant in affairs, should they give or sell their own shares, they may do all that as they please; for they are masters of their own wealth.”

The meaning of this is: “Many sprung from one man,” *i. e.*, many brothers,—some say that the term “being separated” is understood, but in our opinion, the terms “whose duties are separate,” &c., signify that they are separated, for it does not appear that these terms form the predicate, (and the construction of the text is not that “many sprung from one man, shall have separate duties &c.”) since such an injunction would be useless;—“whose duties” such as the worship of gods, ancestors and the twice-born, “are separate,” *i. e.*, apart from those of the other co-sharers;—it does not mean that duties consisting in the preservation of the sacred fire, &c., are separate, for although the performance of these duties depend upon wealth, still they are separate even in a joint family; accordingly, Vrihaspati says, “The worship of gods, ancestors, and the twice-born is joint among those who live in commensality: but the same takes place in every house of the separated kinsmen;” and this (text) has been already considered (by us);—“whose transactions,” *i. e.*, agriculture and similar temporal business, “are separate; if they be not accordant in affairs,” *i. e.*, if they do not give permission to each other, still “should they give or sell their own shares, they may do, as they please, all

that" also any other transaction such as mortgaging, borrowing or lending.

If the separated co-sharers accord their assent then only the determination of any dispute becomes facilitated; but if they do not, then gift &c., do not become invalid. The reason for this is, "for they are masters of their own wealth," *i. e.*, of the property which has become the subject of their exclusive right. The purport being, that mutual assent is requisite when the property is common, but not also when it is separate.

2. As for what has been ordained by Vrihaspati, namely,—“Separated kinsmen, as those that are unseparated, are equal in respect of immoveable property; for one has not power over the whole to give, mortgage or sell it:”—that also is to be taken to lay down that the permission of the separated kinsmen is desirable simply for the purpose of the facility of determining any dispute, in the same way as the permission of the headman of the village. For in the case of immoveable property the determination in a different time, of the question whether the family was separated or joint, may become difficult if in the long interval the attesting witnesses and the like cease to exist. But should the permission be granted, then any dispute (regarding the disposition of property) may be decided, without determining the question as to partition. This is the opinion of Vijnānesvara and many others. But the author of the *Smritichandrikā* says:—If the co-sharers though separated consider the partition of immoveable property to be inconvenient, and so divide the other kinds of property and take their shares separately, but keep the immoveable property joint, with the stipulation that ‘we shall enjoy its profits by dividing the same at the time of realization:’ this text (of Vrihaspati) refers to such immoveable property.

This (assertion of the author of the *Smritichandrikā*) is merely an assumption; for in that case permission is necessary by reason of the very fact of the property being joint.

3. The same sage declares,—“Whatever share has

been allotted to any one, he shall not complain after receiving the same.”—‘Receiving’ means, accepting. Any one who gives his assent at the time of partition and afterwards disputes, shall be restrained by the king, and punished should he persist. This is declared by the same sage, thus,—“If any one who has received an allotment by his own choice, disputes again; he shall be confined to his own share, by the king, and shall be punished if he perseveres.”—‘Perseveres’ means persists.

CHAPTER X.

· ASCERTAINMENT OF A CONTESTED PARTITION.

§ 1.—Evidence of partition. 2.—Circumstantial evidence. 3.—Ordeals and oaths. 4.—Partition over again.

1. The mode of partition having been described, now is stated the mode of determining a doubt regarding the fact of a partition having been made.

On that subject Yājñavalkya says,—“It is to be known that in case of concealment of partition, the ascertainment of the fact of partition may be made by the evidence of kinsmen (jñātis,) relations and witnesses, and by documentary evidence, as well as by disconnected houses and fields.”

(The meaning is :) “It is to be known that in case of concealment,” *i. e.*, denial, “of partition,” made by any one of the separated co-sharers, “the ascertainment,” *i. e.*, the determination “of the fact of partition may be made by the evidence of kinsmen,” *i. e.*, the father’s relations, “relations,” *i. e.*, the maternal uncle and the like,—“and witnesses,” *i. e.*, strangers falling under the definition of a witness: although kinsmen and relations also come under the category of witnesses, still by the rule of ‘the bulls and the heaves’ they are separately mentioned, since they being nearer than outside witnesses, are aware of facts that are incidents of partition, such as separate performance of the *śrāddha* and the like (rites.) and are appointed arbitrators to carry out a partition: and “by documentary evidence,” *i. e.*, the instrument of partition: “as well as by disconnected (yautaka),” *i. e.*, separated by metes and bounds,—agreeably to the root *yu* which means ‘to unite’ or ‘to disunite’—“houses and fields.”

Nārada says,—“If a question arise among co-heirs in regard to the fact of partition, it must be ascertained by the evidence of agnatic relations, by the deed of partition or by the separate transaction of affairs.”—The term ‘agnatic relations’ is used in order to show that if such (witnesses) be forthcoming, other persons should not be

preferred as witnesses: 'affairs' are such as agriculture and the like.

Sankha declares,—“Should a doubt arise on the subject of partition of the wealth of kinsmen, the family may give evidence, if the matter be not known to the agnatic relations.” ‘Family’ means the cognates, such as the maternal uncle; hence it is, that the agnatic relations are prominently set forth by Nārada. The reading, *jnātribhis* or ‘if the eye-witnesses be not known’ (instead of ‘if the matter be not known to agnatic relations’) is not genuine, since it is not found in old manuscripts nor in the commentaries.

The documentary evidence is of greater weight than the testimony of witnesses. This has been dealt with (by us) in the Paribhāṣā (or that part of this commentary, where the adjective law has been treated).

2. Nārada ordains,—“Gift and acceptance of gift, cattle, food, house, land and attendants, must be considered as distinct among separated brethren, as also cooking, religious ceremony, income and expenditure. Separated, and not unseparated kinsmen may reciprocally bear testimony, become sureties, bestow gifts and accept presents. Those by whom such matters are publicly transacted with their co-heirs, are to be known separate even without written evidence.”—‘Religious ceremony’ means, the worship of gods and the like, by reason of the text cited before (ch. IX, § 1, para. 2) namely,—“The worship of gods &c.”,—and by reason of the text of Nārada, namely,—“Of undivided brethren, the religious duties are common; after partition, the religious duties also of each of them become separate.”

Vrihaspati says,—“A violent crime, a pledge of immovable property, and a previous partition among co-sharers may be ascertained by presumptive proof, (if) there are neither writing nor witnesses.”—The particle ‘if’ is understood.—“They who have their income, expenditure and wealth distinct, and have mutual transaction of money-lending and traffic, are undoubtedly separate.”—‘Money-lending’ is, the investment of money for interest; ‘traffic’ is trade; ‘mutual transaction’ means,

when one brother is creditor and another is debtor, one sells and another buys from him : from these and similar facts which cannot be accounted for except by separation, partition is to be inferred.

From the plural number in "such matters" it is not to be supposed that the inference arises only when all these jointly exist ; because the intention is, that the inference arises from all or some of them, and because the text is (not arbitrary but) based upon reason.

3. Where the fact of partition cannot be ascertained by circumstantial evidence, it is to be determined by ordeals or oaths, according as the estate is small or large. It has been set forth in the introductory chapter, that "When the circumstances also fail, it is to be determined by oaths."

4. When, however, no oral evidence is forthcoming, the circumstances are meagre, and neither party wishes to have recourse to ordeals and oaths ; in such a case, Manu says that partition is to be made again, thus,—“When a doubt arises as to the mutual separation of the co-heirs, then re-distribution is to be made by them although residing in different places.”

It is to be observed that this is to be done in the same way as in the partition by the re-united co-heirs, after liquidating the debts of all.

As for what Manu says, namely, “Only once may the distribution of shares take place, only once may a maiden be given (in marriage), only once may the same article be gifted (by an owner) : these three may occur but once :”—this applies in the absence of any reason for repetition. The same is true also in the gift of a daughter in marriage, as well as in any other gift.

Thus is finished the determination of the fact of partition in a case of doubt.

And thus is finished the topic of litigation called Partition of Heritage.

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THE ASIATIC SOCIETY. CALCUTTA

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The Section on *Vyavahāra* or litigation of the *Viramitrodaya* is divided into four parts, the third of which describes eighteen topics of litigations, one of these topics being law of inheritance and succession, called *Vibhāga* or *Dāyabhāga*, i.e. partition of inheritance.

The present volume contains the text of the *Vibhāga* portion of the *Viramitrodaya* with an English translation by a versatile scholar and famous practising advocate of the Calcutta High Court in the late nineteenth century. The publication will prove to be of great research value for the study of the evolution of Hindu law of inheritance and some of the Hindu social problems.